



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2006

Mr. J. Andrew Bench
City Attorney
City of Greenville
P.O. Box 1353
Greenville, Texas 75403-1353

OR2006-12853

Dear Mr. Bench:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 264024.

The Greenville Police Department (the "department"), which you represent, received a request for nine specified police reports. You state that the department has released police report number 2003-00026239 to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that one of the police reports you have submitted for our review, report number 2006-00017856, is not responsive to the present request for information. This ruling does not address the public availability of this information, and the department is not required to release this information in response to this request.

Next, we note that you have not submitted report number 2003-15396 for our review. As you have not submitted this information for our review, we assume you have released it to the extent it existed on the date the department received the request. If you have not released this information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).*

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow

in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You state that the department received the request for information on August 17, 2006. However, you did not seek a decision from this office until September 1, 2006. Accordingly, we conclude that the department failed to comply with the procedural requirements mandated by section 552.301. *See* Gov't Code § 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108.

However, the interests under this exception of a governmental body, other than the one that failed to comply with section 552.301, can provide a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In this instance, we have received correspondence from the Hunt County Attorney's Office (the "county attorney") objecting to release of the submitted information. Therefore, we will consider whether the department may withhold the submitted information on behalf of the county attorney under section 552.108 of the Government Code. Additionally, section 552.101 of the Government Code can provide a compelling reason to withhold information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report number 2006-00004233 pertains to an investigation into injury of a child. Thus, we find that this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, the department must withhold report number 2006-0004233 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

The county attorney raises section 552.108 of the Government Code for the remaining submitted information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The county attorney states that report numbers 2002-00017165, 2003-00010163, 2003-00018521, 2003-00018801, 2003-00021060, and 2003-0006387 pertain to criminal investigations that concluded in results other than convictions or deferred adjudications. Therefore, we agree that section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam). Thus, with the exception of the basic front page offense and arrest information, you may withhold report numbers 2002-00017165, 2003-00010163, 2003-00018521, 2003-00018801, 2003-00021060, and 2003-0006387 under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

¹ We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. See Fam. Code § 261.201(g).

Finally, we note that you have redacted social security numbers from report number 2003-00026239. *See id.* § 552.147 (authorizing a governmental body to redact a living person's social security number from public release without necessity of requesting decision from this office under the Act). By its terms, section 552.147 only excepts from disclosure the social security numbers of living individuals. Therefore, the deceased individual's social security number may not be withheld under section 552.147. We also note that the requestor has a right of access to her own social security number, and thus, her social security number must be released to her. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

In summary, the department must withhold report number 2006-0004233 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the basic information, the department may withhold report numbers 2002-00017165, 2003-00010163, 2003-00018521, 2003-00018801, 2003-00021060, and 2003-0006387 under section 552.108(a)(2) of the Government Code. The remaining information at issue must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 264024

Enc. Submitted documents

c: Ms. Teresa Ann Mitchell
5700 Industrial Blvd. #13206
Greenville, Texas 75401
(w/o enclosures)