



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2007

Ms. Leslie Spear Pearce
Plainview City Attorney
901 Broadway
Plainview, Texas 79072

OR2007-00825

Dear Ms. Pearce:

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# 269794.

The Plainview Police Department (the "department") received two separate requests from the same requestor for information regarding two separate, specified arrests. You state you have released some information. You claim that the submitted information is excepted from disclosure under section 552.108 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state that

¹Although you cite sections 552.101, 552.103, 552.107, and 552.111 of the Government Code, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we assume you no longer assert these exceptions to disclosure. See Gov't Code §§ 552.301, .302. Furthermore, although you also cite sections 552.301, 552.305, and 552.307 of the Government Code, these provisions are not exceptions to disclosure under the Act. See *id.* §§ 552.301, 552.305, 552.307. Rather sections 552.301, 552.305, and 552.307 addresses procedural requirements of the Act. See *id.*

the department received the first request on October 25, 2006 and received the second request on October 27, 2006. Thus, the tenth business day after the department received the first request was November 8, 2006; the tenth business day after the department received the second request was November 10, 2006. The envelope in which the department submitted the information at issue bears a postmark date of November 9, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the department did not submit the information at issue regarding the first request within ten business days and, thus, failed to comply with the procedural requirements of section 552.301 with regard to this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, 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).

Although you assert that the submitted information is excepted pursuant to section 552.108 of the Government Code, this is a discretionary exception that protects a governmental body's interests and may be waived by a governmental body's failure to comply with the procedural requirements of the Act. *See* Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the department may not withhold any of the information responsive to the first request under section 552.108. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure under section 552.108). However, because the department was timely in requesting a decision with regard to the second request, we will consider the applicability of section 552.108 to the information responsive to the second request. Furthermore, section 552.130 of the Government Code is a mandatory exception and may constitute a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will also consider whether section 552.130 requires the department to withhold the information responsive to the first request.

You claim the information responsive to the second request is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection,

investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue relates to a pending criminal investigation. Based upon this representation, we agree that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the information responsive to the second request, which we have marked, under section 552.108(a)(1). As our ruling on this information is dispositive, we need not address your remaining argument regarding the information responsive to the second request.

Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The department must withhold the Texas motor vehicle information we have marked in the information responsive to the first request under section 552.130. The department must also withhold this Texas motor vehicle information in the submitted audio and video recordings responsive to the first request under section 552.130. However, if the department lacks the technical capability to redact this information from the video recording, it must withhold this recording in its entirety. *See* Open Records Decision No. 364 (1983).

Finally, we note that the remaining submitted information includes arrestees’ social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.² The department must withhold the arrestees’ social security numbers under section 552.147.

In summary, with the exception of basic information, the department may withhold the information responsive to the second request, which we have marked, under section 552.108(a)(1) of the Government Code. The department must withhold the marked

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

Texas motor vehicle information in the information responsive to the first request under section 552.130 of the Government Code; however, if the department lacks the technical capability to redact this information from the video recording responsive to the first request, the department must withhold this recording in its entirety. The arrestees' social security numbers must be withheld under section 552.147 of the Government Code. The remaining submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", written in a cursive style.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 269794

Enc. Submitted documents

c: Mr. Eric Willard
701 Broadway Street, Suite 317
Plainview, Texas 79072
(w/o enclosures)