



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2007-01185

Dear Mr. Gambrell:

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# 270345.

The Houston Police Department (the "department") received a request for two specified incident reports. You state that the department will release incident report number 001089206E to the requestor, and that the department "will provide the requestor with a copy of the Public Release Information portion of incident report number 173703705." You claim that the remaining information in incident report number 173703705 is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of this date, you have not submitted to this office a copy or representative sample of incident report number 173703705, which you seek to withhold. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

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* Gov't Code § 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* Gov't Code § 552.007; 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). *But 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). Although section 552.130 can provide a compelling reason to withhold information, because you have not submitted incident report number 173703705 for our review, we have no basis to conclude this exception is applicable. We therefore conclude that the department must release incident report number 173703705. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

We note that you have submitted incident report number 001089206E, which contains information that is protected by sections 552.130 and 552.147 of the Government Code.¹ Section 552.130 excepts from public 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 personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov't Code § 552.130(a)(1), (3). Accordingly, the department must withhold the information that we have marked pursuant to section 552.130.

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. *Id.* § 552.147. Therefore, the department must withhold the social security number we have marked under section 552.147.²

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

In summary, the department must withhold the information we have marked pursuant to sections 552.130 and 552.147 of the Government Code. The remaining requested information 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).

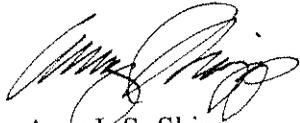
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Amy L.S. Shipp', written in a cursive style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 270345

Enc. Submitted documents

c: Ms. Lisa Hansegard
5815 Gulfton Street #3054
Houston, Texas 77081
(w/o enclosures)