



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2007

Mr. Marc J. Schnall
Langley & Banack Incorporated
For City of Selma
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2007-02009

Dear Mr. Schnall:

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# 275559.

The Selma Police Department (the "department"), which you represent, received a request for information relating to a specified case number. You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We note that one of the submitted documents is subject to section 552.022 of the Government Code. Section 552.022(a) provides for the required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the information that is subject to section 552.022 under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold any of the information that is subject to section 552.022 under section 552.108. Although sections 552.130 and 552.147 of the Government Code are confidentiality provisions for the purposes of section 552.022(a)(17), none of the information that is subject to section 552.022(a)(17) is excepted from disclosure under section 552.130 or section 552.147. Therefore, the department must release the information, which we have marked, that is subject to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have marked the information that the department seeks to withhold under section 552.108(a)(1). You state that the marked information is related to a pending investigation. Based on your representation, we conclude that except for the information that must be released under section 552.022(a)(17), the information that you have marked is excepted from disclosure under section 552.108(a)(1). *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).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). We agree that the department must withhold the Texas driver’s license, license plate and vehicle identification numbers that you have marked under section 552.130. We have marked additional information that must also be withheld under this exception.

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.¹ Gov’t Code § 552.147(a). We agree that the department must withhold the social security numbers that you have marked under section 552.147.

In summary: (1) the department must release the marked information that is subject to section 552.022(a)(17) of the Government Code; (2) the department may withhold the rest of the marked information that relates to the pending investigation under section 552.108(a)(1) of the Government Code; (3) the department must withhold the marked Texas driver’s license, license plate and vehicle identification numbers, along with the additional information that we have marked, under section 552.130 of the Government Code; and (4) the marked social security numbers must be withheld under section 552.147 of the Government Code. The rest of the 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.

¹We also 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.

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).

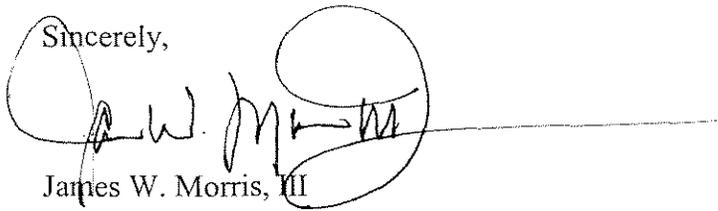
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III", is written over a horizontal line. The signature is enclosed within a large, hand-drawn circle.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 275559

Enc: Submitted documents

c: Mr. Gabriel Vaca
Gillman Honda
16044 IH-35 North
Schertz, Texas 78154
(w/o enclosures)