



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2007

Ms. Beverly West Stephens
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2007-02229

Dear Ms. Stephens:

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# 272931.

The San Antonio Police Department (the "department") received a request for all information pertaining to the murder of an insured individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department failed to comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(a), (b), (e). 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 the governmental body demonstrates a compelling reason 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586

(1991). Because you inform us that the Bexar County District Attorney's Office (the "district attorney") objects to the release of the requested information, we will consider your claim regarding section 552.108. Additionally, because sections 552.101, 552.130, 552.136, and 552.147 can also provide compelling reasons for nondisclosure, we will consider your arguments under those sections.

Before considering your arguments, we note that the submitted information contains a search warrant filed in the public records. Section 552.022 of the Government Code makes public information contained in a court record and such information is not excepted from disclosure unless it is expressly confidential under other law. Gov't Code § 552.022(a)(17). Therefore, the department may withhold the search warrant only to the extent the information is made confidential under other law. You claim that all the information submitted is subject to section 552.108. However, this exception is discretionary and thus, does not make information confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the search warrant may not be withheld on this basis.

However, we note that the search warrant does contain Texas motor-vehicle record information. Section 552.130 of the Government Code provides in relevant part that information that relates to a motor vehicle operator's license or permit or a motor vehicle title or registration issued by a state agency is excepted from public disclosure. Gov't Code § 552.130(a)(1)-(2). Accordingly, pursuant to section 552.130, you must withhold the vehicle identification number and license plate number disclosed in the warrant.

We now address your primary contention that section 552.108 of the Government Code governs the remaining documents. Section 552.108 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). 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 inform us, and have submitted a letter from the district attorney stating, that the submitted information relates to a pending prosecution. Based upon your representation and the district attorney's letter, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime and therefore section 552.108(a)(1) is applicable. *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*. Thus, with the exception of the basic front page offense and arrest information, which you state you have released, the

department may withhold the remaining information from disclosure based on section 552.108(a)(1).¹

Before concluding, we note that the arrestee's social security number appears in the submitted documents. 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. Gov't Code § 552.147(a). Therefore, pursuant to section 552.147, the department must withhold the arrestee's social security number.²

To summarize, the department must release the search warrant pursuant to section 552.022(a)(17) of the Government Code. However, pursuant to section 552.130 of the Government Code, the department must redact from the search warrant the Texas motor-vehicle record information contained therein. Likewise, pursuant to section 552.147 of the Government Code, the department must withhold the arrestee's social security number. With the exception of basic information, the department may withhold the remaining information under section 552.108 of the Government Code.

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.

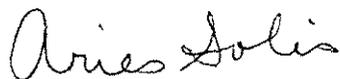
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eb

Ref: ID# 272931

Enc. Submitted documents

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