



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2007

Ms. Beverly W. Stephens  
Assistant City Attorney  
City Attorney's Office  
City of San Antonio  
P.O. 839966  
San Antonio, Texas 78283-3966

OR2007-02600

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#272981.

The San Antonio Police Department (the "department") received a request for any information regarding a specified shooting incident. You claim that the requested information at issue 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, you acknowledge that you failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. See Gov't Code § 552.301(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 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) (holding that a governmental body must make a compelling demonstration to overcome the presumption of openness pursuant to the statutory predecessor of section 552.302); Open Records Decision No. 319 (1982). In order to overcome the presumption that the requested

information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 may be a compelling reason for non-disclosure. Open Records Decision No. 586 (1991). You have submitted a letter from the Bexar County District Attorney's Office ("district attorney") objecting to the release of the submitted information pursuant to section 552.108. Therefore, we will consider the district attorney's arguments. Additionally, because sections 552.101, 552.130, 552.136, and 552.147 can also provide compelling reasons to withhold information, we will consider your arguments under these sections.

Next, we note that the submitted information contains a search warrant that must be released pursuant to section 552.022 of the Government Code. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, the search warrant must be released to the requestor, unless its confidential under other law. Although you raise section 552.108, we note that section 552.108 is a discretionary exception to disclosure under the Act that does not constitute "other law" for purposes of section 552.022. Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We also note, however, that the search warrant contains information that is subject to section 552.130 of the Government Code, which constitutes "other law" for the purposes of section 552.022. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked on the search warrant under section 552.130 of the Government Code.

We will now address your section 552.108 argument for the information not subject to section 552.022. Section 552.108 of the Government Code excepts from disclosure: (a) Information 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[.] Gov't Code § 552.108(a). In this instance, the district attorney states that the disclosure of the submitted information would

interfere with the prosecution of a criminal case. Therefore, based upon this representation, we find that section 552.108(a)(1) applies to the remaining submitted information.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Therefore, the department must release the type of basic information listed in *Houston Chronicle Publishing Company 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).

Although an arrestee’s social security number is considered basic information, we note that the arrestee’s social security number is excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the arrestee’s social security number in the submitted documents.

In summary, the department must release the search warrant contained in the submitted information to the requestor under section 552.022. The department must, however, withhold the Texas motor vehicle record information contained in the search warrant under section 552.130. With the exception of basic information, the department may withhold the remaining submitted information under section 552.108. Although an arrestee’s social security number is considered basic information, the department must withhold the arrestee’s social security number in the submitted information under section 552.147. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Lori A. Cobos  
Assistant Attorney General  
Open Records Division

LC/eb

Ref: ID# 272981

Enc. Submitted documents

c: Mr. Nohl Patrick Bryant  
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(w/o enclosures)