



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2007

Lieutenant Oscar J. Garcia
Crime Records Bureau
City of McAllen Police Department
P.O. Box 220
Austin, Texas 78501

OR2007-04978

Dear Lt. Garcia:

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# 277043.

The City of McAllen Police Department (the "department") received a request for report number 06-98388. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108 (a)(1), (b)(1). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In this instance, you indicate that active investigations are pending in surrounding jurisdictions, however, you have failed to provide us with a representation from any of these jurisdictions asserting that release of the submitted information would interfere with these ongoing investigations. Furthermore, you have not explained how release of these records would otherwise interfere with crime prevention and law enforcement efforts. Accordingly, you have not established that section 552.108 is applicable to the submitted information, and thus, none of the information may be withheld under section 552.108.

We note that the submitted information contains personal financial information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.¹ Section 552.101 encompasses information made confidential by common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). The marked information constitutes personal financial records. Further, in this instance we find that there is not a legitimate public interest in the release of the marked information. Accordingly, you must withhold the marked financial information marked under section 552.101 in conjunction with common-law privacy.

We also note that the submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code provides in part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

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

¹The Office of the Attorney General will raise mandatory exceptions such as section 552.101, 552.130, and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a)(1)-(3). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, we note that the submitted information contains bank account and bank routing numbers. Section 552.136(b) states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. Thus, you must withhold the bank account and routing numbers that we have marked under section 552.136 of the Government Code.

In summary, you must withhold the financial information we have marked under section 552.101 in conjunction with common-law privacy. You must also withhold the Texas motor vehicle record information and bank account and routing numbers that we have marked under sections 552.130 and 552.136 respectively. The remaining information must be released.²

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

²We note that the submitted information contains a social security number. 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.

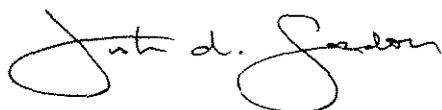
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 277043

Enc. Submitted documents

c: Mr. Carl Lueg
1000 North McColl
McAllen, Texas 78501
(w/o enclosures)