



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2007

Mr. Ernesto Rodriguez
Assistant City Attorney
Office of the City Attorney
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2007-07814

Dear Mr. Rodriguez:

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# 281435.

The El Paso Police Department (the "department") received two separate requests for the file concerning the investigation of a specified fatal accident undertaken by the department's Special Traffic Investigation team. You state you have released some responsive information, but claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit B contains search warrants filed in the public records. 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 warrants must be released to the requestor, unless they are confidential under other law. Although you raise section 552.108 for this information, 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents we have marked on that ground. We note, however, that one of the search warrants contains

information that is subject to section 552.130 of the Government Code, which constitutes “other law” for the purposes of section 522.022.

Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked in one of the search warrants under section 552.130 of the Government Code.

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 and that release of the requested documents would interfere with the detection, investigation, or prosecution of crime. The district attorney seeks to withhold the information in Exhibit B as well as Exhibit D under section 552.108. 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, the department may withhold the remaining documents from disclosure based on section 552.108(a)(1).

You assert the arrestee’s social security number is excepted from disclosure under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The department may withhold the arrestee’s social security number in the submitted information under section 552.147.¹

¹We 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 release the search warrants contained in Exhibit B to the requestor under section 552.022 of the Government Code. The department must, however, withhold the Texas motor vehicle record information we have marked in one of the search warrants under section 552.130 of the Government Code. With the exception of basic information, which must be released, the department may withhold the remaining submitted information under section 552.108 of the Government Code and the arrestee's social security number under section 552.147 of the Government Code. 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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eeg

Ref: ID# 281435

Enc. Submitted documents

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