



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2007

Mr. Cary L. Bovey  
Bovey & Boroquez, L.L.P.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2007-12764

Dear Mr. Bovey:

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# 290484.

The City of Brenham (the "city"), who you represent, received a request for "offense case" number 01-0244. You claim that the marked 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 the submitted documents include Motions to Dismiss that were filed in the 21<sup>st</sup> District Court of Washington County, Texas. Section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes a document that has been filed with a court expressly public. Therefore, the city may withhold this information only to the

extent it is made confidential under other law. Although the city raises section 552.108 for this information, this exception is discretionary and thus, does not make information confidential. *See* 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). Therefore, the Motions to Dismiss may not be withheld under section 552.108 of the Government Code. As the city raises no further exception to the disclosure of the Motions to Dismiss, they must be released.

We now address your claim under section 552.108 of the Government Code for the information that is not subject to section 552.022. 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). 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 state that the incident report relates to a closed investigation, but you do not state the result of the investigation. However, the Motions to Dismiss show that the investigation did not result in conviction or deferred adjudication. Based on this representation and our review of the submitted documents, we conclude that section 552.108(a)(2) is applicable in this instance.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note that you have marked the entire narrative of the incident report to be withheld. You must release a detailed description of the incident from the narrative, however the remaining portions of the report you have marked may be withheld under section 552.108(a)(2).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which 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). We agree that the city must withhold the Texas motor vehicle record information you have marked under section 552.130.

Lastly, you assert that some of the remaining information is excepted 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 city may withhold the social security numbers in the submitted information under section 552.147.<sup>1</sup>

In summary, with the exception of a detailed description from the incident report narrative, the city may withhold the marked portions of the report under section 552.108 of the Government Code. The Texas-issued motor vehicle record information must be withheld under section 552.130 of the Government Code. The social security numbers you have marked may be withheld under section 552.147 of the Government Code. The remaining information must be released to the requestor.

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).

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<sup>1</sup>We 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.

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,



M. Alan Akin  
Assistant Attorney General  
Open Records Division

MAA/mcf

Ref: ID# 290484

Enc. Submitted documents

c: Ms. Bernice Ray  
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(w/o enclosures)