



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2008

Mr. Charles C. Dickerson
Special Assistant District Attorney
Panola County Judicial Center, #301
108 South Sycamore
Carthage, Texas 75633

OR2008-14625

Dear Mr. Dickerson:

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# 325929.

The Panola County District Attorney (the "district attorney") received a request for documents presented to the district attorney from the Texas Department of Public Safety and documents that were presented to the grand jury leading to the indictment of the requestor. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, 552.111, 552.117, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district attorney's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us that the district attorney received this request on July 30, 2008. However, you did

¹Although you also raise sections 552.101, 552.109, 552.119, 552.127, 552.132, 552.137, 552.1425, and 552.143 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we presume you no longer assert these exceptions to disclosure. Gov't Code §§ 552.301, .302. We also note that section 552.101 of the Government Code does not encompass other exceptions found within the Act.

not request a ruling from our office or submit the information at issue until August 19, 2008. Consequently, we find that the district attorney failed to comply with the procedural requirements of section 552.301.

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) (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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. Although you raise sections 552.103, 552.108, and 552.111 of the Government Code, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); 177 (1977) (statutory predecessor to section 552.108 subject to waiver); 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). Accordingly, the district attorney may not withhold the submitted information pursuant to sections 552.103, 552.108, 552.111. However, because sections 552.117 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions.²

You have marked information that you claim is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, personal cellular telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Upon review, we determine the information you have marked is not the type of information protected by section 552.117(a)(1). Therefore, no portion of the submitted information may be withheld on that basis.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. We note, however, that because this exception protects personal privacy, the requestor has a right of access to his own Texas driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).³ However, the district attorney must withhold the Texas driver's license information not belonging to the requestor, which we have marked, pursuant to section 552.130 of the Government Code.

Finally, you have marked information under section 552.147 of the Government Code. Section 552.147(b) 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 this instance, however, the requestor has a right of access to his own social security number. *See Gov't Code* § 552.023. Therefore, the district attorney may not withhold the information you have marked under section 552.147.

In summary, the district attorney must withhold the Texas driver's license information we have marked pursuant to section 552.130. The remaining information must be released.⁴

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

³Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Gov't Code* § 552.023(a).

⁴We note that some of the information being released is confidential and not subject to release to the general public. Because such information may be confidential with respect to the general public, if the district attorney receives another request for this information from an individual other than this requestor, the district attorney should again seek our decision.

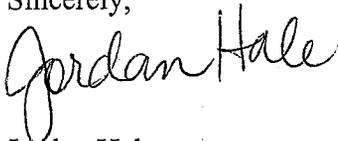
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 325929

Enc. Submitted documents