



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2008

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2008-15095A

Dear Ms. De La Garza:

This office issued Open Records Letter No. 2008-15095 (2008) on November 4, 2008. In that decision, we concluded, except for basic information, the City of Houston (the "city") may withhold report number 054684708 X under section 552.108(a)(1) of the Government Code. Due to additional information we received from the city, we will correct the previously issued ruling. *See* Gov't Code §§ 552.301, .306. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 4, 2008. *See* generally Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 331532.

The city received a request for "documentation that shows the call that was made for the accident" occurring on April 14, 2008. The city claims the requested information is excepted from public disclosure under section 552.108 of the Government Code.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301. The city received the request for

information on October 15, 2008. Thus, the city's fifteenth business day deadline is November 5, 2008. The city timely submitted the incident report. However, after the issuance of Open Records Letter No. 2008-15095, the city supplemented its original submission and now informs this office the incident report is not responsive to the request. Rather, the city explained the call reports submitted as Exhibit 3 are responsive to the request. However, the city failed to timely submit the responsive call reports because the envelope containing this information was postmarked on November 6, 2008. *See id.* § 552.308 (submission is timely if it bears post office cancellation mark indicating time within deadline).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). The city's assertion of section 552.108 is not a compelling reason to overcome the presumption that the information at issue is public. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, the city may not withhold the requested information under section 552.108. However, the information contains information excepted from disclosure under sections 552.101 and 552.130 of the Government Code, which are compelling reasons that overcome the presumption of openness.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990). We have marked the private financial information the city must withhold.

Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle title or registration. We have marked the Texas motor vehicle information the city must withhold under section 552.130. The city must release the rest of Exhibit 3.¹

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).

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).

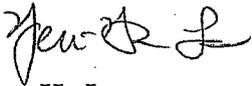
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

¹We note 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. Gov't Code § 552.147(b).

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 331532

Enc. Marked documents

cc: Requestor