



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2005

Ms. Carla A. Robinson
Senior Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2005-03323

Dear Ms. Robinson:

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# 222246.

The College Station Police Department (the "department") received a request for 22 categories of information relating to a traffic accident. You inform us that the department has no information that is responsive to most of the request.¹ You also state that the department has released some of the requested information. You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108 excepts from public disclosure "[a]n 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 . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(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 that the governmental body seeks to withhold. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records

¹The Act does not require the department to release information that did not exist when it received this request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Decision No. 434 at 2-3 (1986). Section 552.108(b)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication.

You inform us that the submitted information relates to a case in which a driver who was cited for failure to yield the right of way “disposed of the citation by entering a plea of No Contest and taking a defensive driving course. Therefore, the accident investigation has not resulted in conviction or deferred adjudication[.]” We note, however, that a plea of no contest, or *nolo contendere*, is the equivalent of a plea of guilty in a criminal prosecution. *See* Crim. Proc. Code art. 27.02(5) (plea of *nolo contendere* is equivalent of plea of guilty for purposes of criminal prosecution); *Ex parte Williams*, 703 S.W.2d 674, 678 (Tex. Crim. App. 1986) (plea of *nolo contendere* admits every element of offense and is legally sufficient in itself to support misdemeanor conviction). Thus, we find that you have not demonstrated that the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. We therefore conclude that the department may not withhold any of the submitted information under section 552.108(b)(2).

We note, however, that the information includes Texas driver’s license numbers. 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[.]”² Gov’t Code § 552.130(a)(1). The Texas driver’s license numbers that we have marked must be withheld under section 552.130. The rest of the submitted information must be released.

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

²Unlike other exceptions to disclosure, this office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

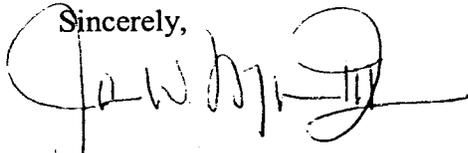
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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); *Tex. 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 222246

Enc: Submitted documents

c: Mr. W. Jeff Paradowski
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