



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2007

Mr. Miguelangel Matos
Attorney at Law
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2007-13199

Dear Mr. Matos:

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# 291465.

The City of Jourdanton (the "city"), which you represent, received a request for video and dispatch records for a specified incident involving a named police officer. You state that the city does not have any responsive dispatch records.¹ You further state that you will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.³ We have considered the exception you claim and reviewed the submitted information.

¹ We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

² 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.

³ Although you also raise section 552.103 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Thus, the city has waived its claim under section 552.103. See Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general).

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) 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)(1)-(2). We note that section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) is applicable to information whose release would interfere with a pending criminal case. *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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. 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 Gov't Code § 552.301(e)(1)(A)*; *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information is related to “a criminal investigation that has not resulted in a conviction or a deferred adjudication,” so as to be excepted from disclosure under section 552.108(a)(2). You also state, however, that “the requested information is related to a pending criminal investigation and concerns a pending prosecution.” Thus, you claim that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Because you have provided this office with contradictory information, we find that you have failed to sufficiently demonstrate the applicability of section 552.108. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply). We therefore conclude that the city may not withhold the submitted information under section 552.108.

We note that some of the submitted information is subject to section 552.130 of the Government Code.⁴ 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

⁴ The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. The submitted compact disc contains a video recording from a police car dashboard camera. The video recording includes Texas motor vehicle record information. Accordingly, the city must withhold the Texas motor vehicle record information in the submitted video recording under section 552.130 of the Government Code, and the remaining submitted information must be released. However, if the city lacks the technical capability to redact this information from the video recording, it must withhold this recording in its entirety. See Open Records Decision No. 364 (1983).

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).

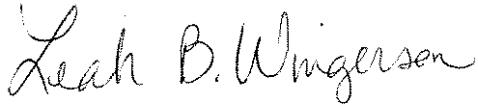
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 291465

Enc. Submitted documents

c: Mr. Chris Rodgers
309 Henderson
Bishop, Texas 78343
(w/o enclosures)