



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2008

Mr. K. Jefferson Bray
Senior Legal Advisor
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2008-04021

Dear Mr. Bray:

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# 305694.

The Plano Police Department (the "department") received a request for radar and ticket information pertaining to a specified incident involving the requestor. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains documents filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Additionally, such information is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Although you assert that the information at issue is excepted under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by the governmental body. *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 Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (governmental

body may waive statutory predecessor to section 552.108). Therefore, sections 552.103 and 552.108 do not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed documents, which we have marked, under section 552.103 or section 552.108. However, because section 552.130 of the Government Code is considered "other law" for purposes of section 552.022, we will address the applicability of that exception to the submitted information.¹

Section 552.130 of the Government Code 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). Section 552.130 also excepts from disclosure information that relates to a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See id.* § 552.130(a)(3). We note, however, that section 552.130 protects personal privacy. In this instance, a portion of the Texas motor vehicle record information at issue belongs to the requestor. As such, the requestor has a right of access to his own Texas motor vehicle record information under section 552.023 of the Government Code, and the department may not withhold that information from him under section 552.130.² The department must withhold the remaining Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We now address your arguments against disclosure of the remaining submitted information not subject to section 552.022(a)(17). Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). We note that the remaining submitted information includes citations. Because copies of the citations have been provided to the individuals who were cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the citations under section 552.108(a)(1), but instead must release these documents, which we have marked. You state that the remaining submitted information

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²*See* Gov't Code § 552.023 (a) ("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."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual).

relates to a pending criminal prosecution. Based upon this representation, we conclude that release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. 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). Accordingly, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.³

In summary, the department must release the court-filed documents and the marked citations. The department must, however, withhold the information we have marked within the court-filed documents and citations under section 552.130 of the Government Code. The department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

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), (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).

³As our ruling is dispositive for this information, we need not address your remaining claim against disclosure of this information.

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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 305694

Enc. Submitted documents

c: Mr. Abdulrahman Akil
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(w/o enclosures)