



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2008

Ms. Meredith Ladd  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road Suite 800  
Richardson, Texas 75081

OR2008-10669

Dear Ms. Ladd:

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# 318402.

The Town of Flower Mound (the "town"), which you represent, received a request for both sides of a named police officer's copy of a traffic citation and six categories of information relating to the officer and a speed measuring device. You state that the town has no information that is responsive to parts of the request.<sup>1</sup> You have submitted information that the town seeks to withhold under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>2</sup>

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Section 552.108(b)(1) excepts "[a]n internal record or notation of a law enforcement agency

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or 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).

<sup>2</sup>We note that you appear to have submitted a copy of only one side of the citation. We assume that the submitted information is a representative sample of the entire citation. This ruling neither reaches nor authorizes the town to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the release of the submitted information would interfere with a pending criminal prosecution in the town’s municipal court. Based on your representation and our review of the information at issue, we conclude that the town may withhold most of the submitted information under section 552.108(a)(1). *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).

The remaining information at issue is the requested citation, which was issued to and signed by the requestor. Because a copy of a citation is provided to the person who was cited, we find that you have not demonstrated that the release of the citation will interfere with the pending prosecution. *See Gov’t Code* § 552.108(a)(1), (b)(1). We therefore conclude that the town may not withhold the citation, which we have marked, under section 552.108 and must release that information.

In summary: (1) the marked citation must be released to the requestor; and (2) the town may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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).

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<sup>3</sup>We note that the citation contains information relating to the requestor’s Texas driver’s license and motor vehicle registration that the town would be required to withhold from the public under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to her own driver’s license and motor vehicle information under section 552.023 of the Government Code. Should the town receive another request for the citation from a person who would not have a right of access to the requestor’s private information, the town should resubmit the citation and request another ruling. *See Gov’t Code* §§ 552.301(a), .302.

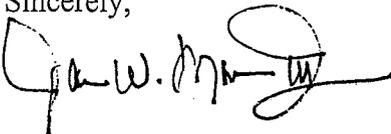
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



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

JWM/jh

Ref: ID# 318402

Enc: Submitted documents

c: Ms. June Emerson  
3608 Welborne Lane  
Flower Mound, Texas 75022  
(w/o enclosures)