



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2008

Mr. Brett Colston
Assistant Chief of Police
Waxahachie Police Department
216 North College
Waxahachie, Texas 75165

OR2008-16946

Dear Mr. Colston:

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# 329752.

The Waxahachie Police Department (the "department") received a request for information pertaining to a specified incident. You state that you are providing the requestor with some information. You claim that the submitted call for service sheet and accompanying audio recordings are excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You specifically raise sections 552.108(a)(2) and 552.108(b)(2) for the information at issue, which provide as follows:

- (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:

...

(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;

...

(b) An 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 is excepted from [required public disclosure] if:

...

(2) 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(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *Id.* A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *Id.* In this instance, however, you state that the submitted information relates to a case that is classified "as an open and active investigation." Thus, we conclude that you have failed to demonstrate that the submitted information relates to a concluded investigation or prosecution that did not result in conviction or deferred adjudication. Accordingly, the submitted information may not be withheld under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

You assert that some of the submitted information is subject to section 552.130 of the Government Code. 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Thus, we have marked a Texas-issued license plate number within the submitted documents that is subject section 552.130, and we note that the submitted audio recording contains corresponding information. It appears, however, that the requestor may be the owner of the vehicle at issue. Section 552.130 protects privacy interests, and the person to whom such information relates has a right of access to such information under section 552.023 of the Government Code. Thus, if the requestor is the owner of the vehicle in question, then the department must release the Texas-issued license plate number we have marked. To the extent the requestor is not the owner, we agree that the department must withhold the information we have marked, as well as corresponding information within the submitted audio recording, under section 552.130.

You also assert that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a government 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. Upon review, however, we find that the submitted information does not contain any social security numbers. Thus, no information may be withheld under section 552.147 of the Government Code.

In summary, if the requestor is the owner of the vehicle in question, then the department must release the Texas-issued license plate number we have marked under section 552.130 of the Government Code.¹ To the extent the requestor is not the owner, the department must withhold the information we marked, as well as corresponding information within the submitted audio recording, under section 552.130. In either case, the remaining information must be released to the requestor.

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).

¹In this case, we note that because the requestor would have a special right of access to this information, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 329752

Enc. Submitted documents

c: Requestor
(w/o enclosures)