



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2009

Ms. Nicole B. Webster
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-02788

Dear Ms. Webster:

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# 336278 (Waco reference # LGL-08-1181).

The Waco Police Department (the "department") received a request for incident reports on specific crimes involving the requestor's client and a named individual and other related reports involving the named individual. You indicate that some of the requested information is being released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We will first address your claim under section 552.108 of the Government Code as it is, potentially, the most encompassing exception you raise. Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) 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). You claim that report number 06-45144 is excepted under section 552.108(a)(1). We note however, that you have not submitted report number 06-45144. Thus, you may not withhold report number 06-45144 under section 552.108. *See Gov't Code* §§ 552.301(e)(1)(D), .302.

However, you have submitted a memorandum from the department indicating that report numbers 08-13162 and 06-48654 relate to open and pending criminal investigations and prosecutions. You have also highlighted large portions of these reports as being excepted from disclosure. Based upon the representations in your brief, the department memorandum, and our review, we find that section 552.108(a)(1) is generally applicable to the pages and the 9-1-1 recording you have marked in report number 08-13162. *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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). The department may, therefore, withhold the marked pages and 9-1-1 recording in report number 08-13162 pursuant to section 552.108(a)(1) of the Government Code.¹ We note that you have the discretion to release all or part of the marked information in report number 08-13162 that is not otherwise confidential by law. Gov't Code § 552.007.

However, we note that report number 06-48654 involves conduct that occurred on November 10, 2006. The statute of limitations for the offense described in report number 06-48654 is two years. *See* Pen. Code § 28.03(b)(2) (criminal mischief offenses are misdemeanors where pecuniary loss is less than \$1,500); Crim. Proc. Code art. 12.02 (indictment for a misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). Thus, the limitations period has passed for the offense underlying report number 06-48654. You have not informed this office that any criminal charges were filed within the limitations period in this case. Furthermore, you have not otherwise explained how release of report number 06-48654 would interfere with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to report number 06-48654 and it may not be withheld under that exception.

Next, we address your contention that a portion of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Id. § 552.130(a). We note that the requestor is the authorized representative for an individual whose Texas driver's license number is listed in the remaining information. Section 552.130 of the Government Code protects personal privacy. Thus, the requestor, as the authorized representative of her client, has a right of access to her client's driver's license

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the marked pages and 9-1-1 recording in report number 08-13162.

information under section 552.023, and it may not be withheld from her under section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, we have marked this information for release.² However, the department must withhold the remaining Texas motor vehicle information you have marked in the remaining information under section 552.130 of the Government Code.

In summary, the department may withhold the marked pages and 9-1-1 recording in report number 08-13162 pursuant to section 552.108(a)(1) of the Government Code. Except for the information we have marked for release, the department must withhold the Texas motor vehicle information you have marked in the remaining information under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

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²Because the requestor has a special right of access to this information in this instance, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

³We note the remaining information contains a social security number. 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. Gov't Code § 552.147.

Ref: ID# 336278

Enc. Submitted documents

cc: Requestor
(w/o enclosures)