



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-14022

Dear Mr. Hawk:

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# 357403 (ORR 2009-5253).

The Dallas Police Department (the "department") received a request for information related to a specific incident. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you inform this office that some of the requested information was the subject of a previous request received by the department, as a result of which this office issued Open Records Letter No. 2009-08380 (2009). In that ruling we concluded that the department may withhold the information marked under section 552.108(a)(1) of the Government Code, must withhold the information marked under section 552.130 of the Government Code, and may

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

withhold the submitted social security numbers under section 552.147 of the Government Code. We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the department may continue to rely on Open Records Letter No. 2009-08380 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note, and you acknowledge, that the department did not comply with the ten-business-day deadline required by section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). The department also failed to comply with the fifteen-business-day deadline required by section 552.301(e). *See id.* § 552.301(e)(1). The information at issue is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). The Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will determine whether the department may withhold any of the information at issue under section 552.108 on behalf of the district attorney. Because section 552.130 of the Government Code can also provide a compelling reason to overcome the presumption of openness, we will consider your argument under this exception as well.

The district attorney seeks to withhold portions of the submitted information under section 552.108 of the Government Code. Section 552.108(a) 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.*

§ 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the district attorney states that the submitted information relates to a pending criminal investigation and prosecution. The district attorney requests the information you have marked be withheld because release of these records at this time will interfere with its ability to prosecute this case. Based upon these representations and our review, we conclude release of the information at issue 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). Thus, the department may withhold the information you have marked under section 552.108(a)(1).

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which 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). Upon review, the information you have marked must generally be withheld under section 552.130. We note, however, that the requestor may be the insurance provider of the owner of the vehicle listed in the submitted information. As such, this requestor, if acting as the vehicle owner's authorized representative, has a right of access to the marked Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requesting insurance company is acting as the vehicle owner's authorized representative. Therefore, we rule conditionally. To the extent the requestor has a right of access under section 552.023 to the marked Texas motor vehicle record information, the department must release the marked information to this requestor.² To the extent this requestor does not have a right of access under section 552.023, the department must withhold the marked information under section 552.130 of the Government Code.

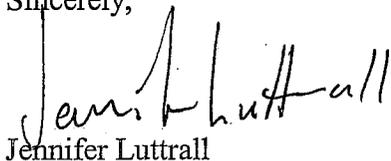
In summary, the department may continue to rely on Open Records Letter No. 2009-083080 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department may withhold the information you have marked on behalf of the district attorney under section 552.108(a)(1) of the Government Code. To the extent this requestor does not have a right of access under section 552.023, the department must withhold the marked information under section 552.130 of the Government Code. The remaining information must be released.

²In that case, should the department receive another request for this particular information from a different requestor, then the department should again seek a decision from this office. *See* Gov't Code §§ 552.301(a), .302.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 357403

Enc. Submitted documents

c: Requestor
(w/o enclosures)