



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2009

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2009-15302

Dear Ms. Brewer:

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# 359586.

The Wylie Police Department (the "department"), which you represent, received a request for several categories of information pertaining to a traffic stop involving the requestor.¹ You indicate that some of the requested information does not exist.² You claim that the submitted information is 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 information.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

¹We note the department sought and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes receipts and invoices pertaining to the expenditure of funds by the department that fall within the purview of subsection 552.022(a)(3). Although you assert that these documents are excepted under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the department may not withhold these documents under section 552.108. We note that although you also raise section 552.130 of the Government Code, which is "other law" for purposes of section 552.022, the information subject to section 552.022 does not contain any information covered by this exception. However, we note that portions of the information subject to section 552.022 are excepted from disclosure under section 552.136 of the Government Code, which is considered other law for purposes of section 552.022.³ Accordingly, we will consider the applicability of this exception to the documents that are subject to section 552.022. We will also consider your claim under section 552.108 for the information that is not subject to section 552.022.

Section 552.136 states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). The department must withhold the account number we have marked in the information that is subject to section 552.022 under section 552.136 of the Government Code.

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,

³The 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).

investigation, or prosecution of crime.” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why 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 submitted information includes a citation. Because a copy of the citation was provided to the individual who was cited, we find that release of the citation 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 citation under section 552.108(a)(1). You state, and provide an affidavit from the department reflecting, that the remaining information relates to a pending criminal investigation. Based on this representation, we conclude that release of the remaining 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Gov’t Code* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information and the citation, the department may withhold the remaining information under section 552.108(a)(1).

Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver’s license and information relating to a Texas motor vehicle title or registration. *See Gov’t Code* § 552.130(a)(1)-(2). We note that section 552.130 protects personal privacy. Although the citation contains information subject to section 552.130, the requestor is the individual to whom the Texas motor vehicle record information pertains. As such, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). Accordingly, the citation must be released in its entirety.

In summary, with the exception of the marked information that must be withheld under section 552.136 of the Government Code, the department must release the information that we have marked subject to section 552.022(a)(3) of the Government Code. With the exception of basic information and the citation, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

⁴Because the requestor has a special right of access to some of the information being released 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. *See Gov’t Code* § 552.023.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 359586

Enc. Submitted documents

cc: Requestor
(w/o enclosures)