



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 12, 2009

Ms. Martha T. Williams  
Olson & Olson L.L.P.  
For City of Friendswood  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2009-16040

Dear Ms. Williams:

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# 362367.

The City of Friendswood (the "city"), which you represent, received a request for information related to the requestor's client or her vehicle during a specified time period. You state that some responsive information will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(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)(1)-(2), (b)(1)-(2). Generally, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that Exhibit A relates to pending criminal cases. Upon review, we find that the release of the information in Exhibit A 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.*, 536 S.W.2d 559 (Tex. 1976) (*per curiam*) (court delineates law enforcement interests that are present in active cases). Thus, we agree that section 552.108(a)(1) is applicable to Exhibit A.

Sections 552.108(a)(2) and 552.108(b)(2) except from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming sections 552.108(a)(2) and 552.108(b)(2) must demonstrate that the requested information relates to a criminal matter that has concluded in a final result other than a conviction or deferred adjudication. You state that the information you have marked in Exhibit B relates to cases which concluded with a result other than conviction or

deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to these reports.

We note that 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). With the exception of basic information, the city may withhold Exhibit A under section 552.108(a)(1) and the information you have marked in Exhibit B under section 552.108(a)(2).<sup>1</sup>

You seek to withhold from disclosure some of the remaining information pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license, a Texas motor vehicle title or registration, and a Texas personal identification document. See Gov't Code § 552.130(a)(1)-(3). We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's Texas motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him based on section 552.130. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, upon review, we conclude that the city must withhold the information we have marked under section 552.130 of the Government Code. The city must also withhold Texas-issued license plate numbers from the submitted video recording under section 552.130. We note, however, that if the city is unable to redact the portions of the submitted videotape that reveal Texas motor vehicle record information, then the videotape must be withheld in its entirety pursuant to section 552.130. See Open Records Decision No. 364 (1983).

In summary, with the exception of basic information, the city may withhold Exhibit A under section 552.108(a)(1) of the Government Code and the information you have marked in Exhibit B under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked and the Texas-issued license plate numbers on the submitted videotape under section 552.130 of the Government Code. The remaining information must be released to this requestor.<sup>2</sup> However, if the city does not have the technical capacity to

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of Exhibit A, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

<sup>2</sup>We note that the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

redact the information that is subject to section 552.130 from the videotape, the city must withhold the videotape in its entirety. *See* Open Records Decision No. 346 (1983).

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 362367

Enc. Submitted documents

c: Requestor  
(w/o enclosures)