



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

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

OR2009-16728

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# 362667.

The Waxahachie Police Department (the "department") received a request for all information regarding two specified citations, a copy of the department's policy on showing radar readings to motorists, and a copy of a response to the requestor's complaint. You state you have no information responsive to portions of the request.¹ You claim that the submitted information is 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.

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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 the 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.* You state that the submitted information relates to a case "that did not result in prosecution, conviction or deferred adjudication." However, you do not assert that the investigation has concluded, but rather you state the information relates to an open and pending investigation. Because you have provided this office with conflicting representations, we find that you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the submitted information, and it may not be withheld on this basis. *See id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You claim that some of the submitted information is excepted from disclosure by sections 552.130 and 552.147 of the Government Code. Section 552.130 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). Section 552.147 provides that "[t]he social security number of a living

person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). We note, however, that sections 552.130 and 552.147 protect personal privacy. In this instance, the information at issue belongs to the requestor. As such, the requestor has a right of access to her own Texas motor vehicle record information and social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual.) Therefore, the requestor's Texas motor vehicle record information and social security number may not be withheld in this instance.² As you raise no other exceptions to disclosure, the submitted information must be released to the requestor.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

²We note that if the department receives another request for this information from a person who would not have a special right of access to this information, the department should resubmit this same information and request another decision from this office. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

Ref: ID# 362667

Enc. Submitted documents

c: Requestor
(w/o enclosures)