



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2010

Mr. James D. Parker
Knight & Partners
For City of Dublin
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2010-03283

Dear Mr. Parker:

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# 372069.

The City of Dublin (the "city"), which you represent, received a request for information related to a named former police officer.¹ You state that you will provide some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that one of the submitted documents, which we have marked, is not responsive to the instant request for information because it was created after the date the city received the request. This ruling will not address the non-responsive information, and the city need not release it in response to this request.

Next, we note the responsive information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code,

¹We note that the city contacted the requestor who clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the responsive information under section 552.103. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address that exception.

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The responsive information relates to an internal affairs investigation conducted by the city's police department. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you explain that the responsive information relates to an ongoing criminal investigation. We note the information at issue includes a citation that was provided to the individual who was cited. Because you have not provided additional arguments explaining how further release of the citation would interfere with the pending criminal investigation, we find the city may not withhold the citation under section 552.108(a)(1). Based upon your representations and our review, 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. 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). Accordingly, we conclude that, with the exception of the submitted citation, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code.

Next, we note that the citation contains information subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information related to a motor

²The 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).

vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that must be withheld under section 552.130 of the Government Code.³

In summary, with the exception of the submitted citation, the city may withhold the responsive information under section 552.108(a)(1) of the Government Code. The city must withhold the Texas motor vehicle information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 372069

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.