



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2010

Ms. Janette Ansolabehere  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2010-07761

Dear Ms. Ansolabehere:

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# 386200 (DPS No. 10-0930).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified incident. You state the department is releasing some of the responsive information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no other exceptions to their disclosure, the marked court-filed documents must be released to this requestor.

We now address your argument under section 552.108 of the Government Code for the information that is not subject to section 552.022. Section 552.108 excepts from public 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, investigation, or prosecution of crime[.]” Gov’t Code § 552.108 (a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal investigation and prosecution. Based on your representation and our review, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

We note that the remaining information includes copies of citations. However, it is not clear whether the submitted citations were provided to the individuals cited. Thus, we must rule in the alternative. If the submitted citations were not provided to the individuals cited, they may be withheld under section 552.108(a)(1). If the submitted citations were provided to the individuals who were cited, the release of this information will not interfere with the detection, investigation, or prosecution of crime and they may not be withheld under section 552.108(a)(1). *See* Gov’t Code § 552.108(a)(1). In either case, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

If the citations are not excepted under section 552.108, we note that they contain information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Gov’t Code § 552.130(a)(1). We note that section 552.130 protects personal privacy. In this instance, the requestor has a right of access under section 552.023 to the Texas motor vehicle record information pertaining to her client and it may not be withheld from her pursuant to section 552.130. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). However, upon review, the department must withhold

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<sup>1</sup>The 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).

the Texas driver's license number not pertaining to the requestor's client, which we have marked, under section 552.130 of the Government Code.<sup>2</sup>

In summary, the department must release the marked court-filed document pursuant to section 552.022(a)(17) of the Government Code. The department may generally withhold the remaining information under section 552.108(a)(1) of the Government Code. However, to the extent the submitted citations were provided to the individuals cited, the department may not withhold them under section 552.108(a)(1) of the Government Code. If the citations are not excepted under section 552.108(a)(1) of the Government Code, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code and release the remaining information in the citations.<sup>3</sup>

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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

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<sup>2</sup>This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>3</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 (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).

Ref: ID# 386200

Enc. Submitted documents

c: Requestor  
(w/o enclosures)