



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2010

Mr. Whitt Wyatt

Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
For City of Allen
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-10088

Dear Mr. Wyatt:

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# 385875 (Client ID #43326; APD No. 10-68).

The Allen Police Department (the "department"), which you represent, received a request for a specified call sheet and incident report, as well as all related audio and video recordings, and specified communications. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that one of the submitted discs is corrupt and cannot be viewed. As this office cannot review the corrupt disc, we conclude that you have failed to comply with the requirements of section 552.301 of the Government Code with respect to that information. *See* Gov't Code § 552.301(e)(1)(D). Under section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the presumption that the information is public and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is confidential by law or third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because this office is unable to review the corrupt

disc, we have no basis to conclude that the information is confidential by law. Therefore, we have no choice but to order the department to release that information. However, we 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, license plate numbers, and the portion of any video depicting a discernible Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, to the extent the disk at issue contains Texas driver's license numbers, license plate numbers, or is a video recording which contains a depiction of a discernible Texas license plate number, the department is authorized to withhold such information under section 552.130 of the Government Code in conjunction with the previous determination in ORD 684. If you maintain a legible copy of the information on the disk and believe that any other information contained therein is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below pursuant to section 552.324 of the Government Code.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date of the governmental body's receipt of the request, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us that the submitted information relates to a criminal case the department "intends to file, or has already filed with the District Attorney's Office." As the department

is not a party to the litigation, the department does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from any governmental body with a litigation interest that the governmental body wishes the information at issue to be withheld pursuant to section 552.103. Accordingly, the department may not withhold the submitted information under section 552.103 of the Government Code.

We note that the submitted information contains information that is subject to ~~section 552.130 of the Government Code.~~¹ ~~Section 552.130 of the Government Code~~ provides 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). Thus, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, as well as the Texas license plate numbers in the submitted video recordings. In the event the department does not have the technological capacity to redact the license plate numbers from the submitted video recordings, the department must withhold the video recordings in their entirety.

In summary, the department must release the information contained on the corrupt disc, which we have marked, with the exception of any Texas driver's license numbers or license plate numbers, which the department is authorized to withhold under section 552.130 in accordance with ORD 684. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, as well as the Texas license plate numbers in the submitted video recordings. In the event the department does not have the technological capacity to redact the license plate numbers from the submitted video recordings, the department must withhold the video recordings in their entirety. The remaining information must be released.

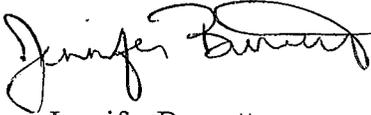
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett". The signature is fluid and cursive, with the first name being more prominent.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 385875

Enc. Submitted documents

c: Requestor
(w/o enclosures)