



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2010

Mr. Peter Scott  
Junior Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2010-10215

Dear Mr. Scott:

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# 386258 (City ID# 133).

The Wichita Falls Police Department (the "department") received a request for information relating to a specified case number. You claim that the requested 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 information you submitted.

We first note that the submitted information includes a court document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Thus, the court document we have marked is subject to disclosure under section 552.022(a)(17). Although you seek to withhold the submitted information under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022(a)(17).

Therefore, the marked court document may not be withheld under section 552.103 or section 552.108 and must be released pursuant to section 552.022(a)(17).

Next, we address your claims under sections 552.103 and 552.108 of the Government Code for the rest of the information at issue. Section 552.103 excepts from disclosure “information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party[.]” Gov’t Code § 552.103(a). A governmental body that claims section 552.103 must demonstrate that the information at issue is related to civil or criminal litigation that was pending or reasonably anticipated on the date of the governmental body’s receipt of the request for the information. *See id.* § 552.103(c); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 551 at 4 (1990).

Section 552.108(a)(2) 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 . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body that claims section 552.108(a)(2) must demonstrate that the information at issue is related to a concluded criminal investigation that did not result in a conviction or a deferred adjudication. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In support of the department’s claim under section 552.103, you represent to this office that the submitted information is related to “ongoing criminal litigation.” In support of the department’s claim under section 552.108(a)(2), you represent that the submitted information is related to a case that “was dismissed without a conviction or deferred adjudication.” You also have submitted a letter in which the Wichita County District Attorney’s Office (the “district attorney”) indicates that the submitted information is related to “ongoing criminal litigation” but also states that the information is related to a case “that did not result in conviction or deferred adjudication.” Thus, your representation, and that of the district attorney, that the information at issue is related to pending criminal litigation is contradicted by your further statement, and that of the district attorney, that the information is related to a concluded criminal case. In the face of these contradictions, we are unable to conclude that the submitted information is related either to pending criminal litigation, so as to be excepted from disclosure under section 552.103, or to a concluded case that did not result in a conviction or a deferred adjudication, so as to be protected by section 552.108(a)(2). We therefore conclude that the department may not withhold any of the submitted information under section 552.103 or section 552.108 of the Government Code.

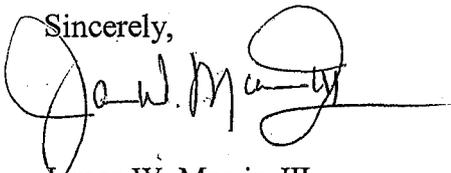
We note that section 552.130 of the Government Code is applicable to some of the submitted information.<sup>1</sup> This section excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(2). The department must withhold the Texas motor vehicle information we have marked under section 552.130.<sup>2</sup>

In summary, the marked Texas motor vehicle information must be withheld under section 552.130.<sup>3</sup> The department must release the rest of the submitted information, including the marked court document that is subject to section 552.022(a)(17) of the Government Code.

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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/tp

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<sup>1</sup>This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>2</sup>We note that 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 a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

<sup>3</sup>We note that the submitted information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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Enc: Submitted documents

c: Requestor  
(w/o enclosures)