

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 13, 2010

Ms. Jessica Sangsvang  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-10390

Dear Ms. Sangsvang:

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# 386211 (PIR No. W000564).

The City of Fort Worth (the "city") received a request for information related to a named individual and case number 1072921-R. You claim that the requested 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, portions of which consist of representative samples.<sup>1</sup>

Section 552.108(a) 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[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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). Although the defendant was convicted, you argue the submitted information pertains to an open and working investigation because the defendant has not exhausted his available

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

appellate remedies. You do not inform us that the defendant had filed a notice of appeal at the time the city received the request for information. A mere chance of an appeal is insufficient to demonstrate that release of the information would interfere with the further prosecution of the crime. Thus, we conclude the city has not established the applicability of section 552.108(a)(1) and the submitted information may not be withheld on this basis.

We note the submitted records contain information subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 excepts from disclosure “information [that] relates to . . . a motor 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[.]” Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the information we have marked pursuant to section 552.130 of the Government Code.

We also note that some of the remaining information is excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we conclude the account number we have marked must be withheld under section 552.136 of the Government Code.

Finally, we note that the remaining submitted information contains e-mail addresses. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the city has received consent for their release.

Finally, we note that some of the materials at issue appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the information we have marked pursuant to sections 552.130, 552.136, and 552.137 of the Government Code.<sup>3</sup> The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.<sup>4</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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

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<sup>3</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 Texas driver's license and license plate numbers under section 552.130 of the Government Code, account numbers under section 552.135, and e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the information to be released includes social security numbers. 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. Gov't Code § 552.147.

Ref: ID# 386211

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

COPY

Cause No. D-1-GV-10-001346

CITY OF FORT WORTH and TARRANT COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE, Plaintiffs,

v.

GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.

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IN THE DISTRICT COURT of Travis County, Texas

MAR 25 2011 AMC

345th JUDICIAL DISTRICT At ANITA RODRIGUEZ-MENDOZA, Clerk

TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiffs City of Fort Worth and Tarrant County Criminal District Attorney's Office and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled.

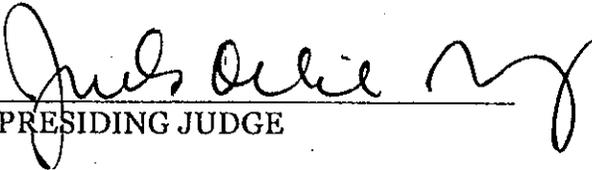
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The requestor in this case, Denise Heard, was acting as an agent for her husband, Stephen Heard, who is an incarcerated individual;
2. Fort Worth and Tarrant County DA are not required to accept or comply with her request for Stephen Heard's criminal investigation file;
3. Pursuant to ¶ 2, above, Fort Worth is not required to comply with OR2010-10390 (2010), nor release any of the requested information;
4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 24 day of March, 2011.

  
PRESIDING JUDGE

APPROVED:

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CRIMINAL DISTRICT ATTORNEY'S  
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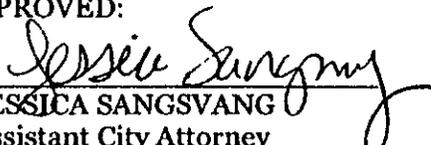
  
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State Bar No. 24045580  
ATTORNEY FOR DEFENDANT

5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 24<sup>th</sup> day of March, 2011.

\_\_\_\_\_  
PRESIDING JUDGE

APPROVED:

  
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