



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2010

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap, 9<sup>th</sup> Floor  
Fort Worth, Texas 76196

OR2010-10618

Dear Ms. Fourt:

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# 386936.

The Tarrant County Public Health Department (the "department") received a request for a specified OSSF, septic, file. 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.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 522.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You indicate that

the submitted information consists of an investigation conducted by the department. However, you have not demonstrated that the department is a law enforcement agency. *See* Open Records Decision No. 199 (1978) (agency whose function is essentially regulatory in nature is not “law enforcement agency” for purposes of statutory predecessor to section 552.108). Section 552.108, however, may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You have provided documentation demonstrating that the Tarrant County Sheriff’s office objects to the release of the responsive information and that the information relates to a pending criminal case. Based on the submitted representations, we agree release of the responsive information would generally 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). However, we note that the responsive information contains a copy of a citation. Because a copy of this citation has been provided to the individual who was cited, we find that its release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the citation under section 552.108(a)(1). However, the department may withhold the remaining responsive information pursuant to section 552.108(a)(1) of the Government Code.

We note, however, that the citation contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides that 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. *Id.* § 552.130(a)(1), the department must withhold the Texas motor vehicle record information we have marked in the submitted citation under section 552.130 (2). Upon review, we find of the Government Code.<sup>2</sup>

In summary, with the exception of the marked citation, the department may withhold the responsive information pursuant to section 552.108(a)(1) of the Government Code. In

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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).

<sup>2</sup>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, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

releasing the marked citation, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 386936

Enc. Submitted documents

c: Requestor  
(w/o enclosures)