



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-13927

Dear Mr. Alicie:

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# 393260.

The Baytown Police Department (the "department") received a request for a specified police report. You state the department will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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 . . . 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.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information

¹We note that 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.

you have marked relates to a pending criminal investigation. Based on this representation and our review, we conclude that the release of this information would 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. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.²

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state.” Gov't Code § 552.130(a)(2). We have marked the motor vehicle record information in the remaining information that is subject to section 552.130 of the Government Code. We note, however, the requestor in this instance appears to represent the insurance provider of the owner of the vehicle listed in the submitted information. As such, this requestor, if acting as the vehicle owner's authorized representative, has a right of access to the marked Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). In this instance, it is not clear that the requestor is acting as the vehicle owner's authorized representative. Therefore, we must rule conditionally. To the extent the requestor has a right of access under section 552.023 to the Texas motor vehicle record information we have marked, the department must release this information to the requestor. To the extent this requestor does not have a right of access under section 552.023, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

Section 552.151 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You seek to withhold the names and identification numbers of undercover officers you have marked in the remaining information. You represent that

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³We 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 license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

release of this information would subject these undercover officers to a "substantial threat of physical harm." Based on your representation, we conclude you have demonstrated that release of the information you have marked would subject the officers to a substantial threat of physical harm. Therefore, we conclude the department must withhold the information you have marked under section 552.151 of the Government Code.

In summary, the department may withhold the information you have marked under section 552.108 of the Government Code. To the extent the requestor is not the authorized representative of the individual whose Texas motor vehicle record information is at issue, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.151 of the Government Code. 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 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 H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 393260

Enc. Submitted documents

c: Requestor
(w/o enclosures)