



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2010

Ms. Twanda Somerville
Records Management Coordinator
City of Harker Heights
305 Miller's Crossing
Harker Heights, Texas 76548

OR2010-16003

Dear Ms. Somerville:

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# 397562.

The Harker Heights Police Department (the "department") received a request for all records pertaining to a specified July 10, 2010 incident involving the requestor's client. You state the department has released a portion of the responsive information to the requestor. You claim the remaining portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov't Code 552.108(a)(2)*. Section 552.108(b)(2) excepts "[a]n internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). 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.* §§ 552.302(e)(1)(A).

You inform us the submitted information is related to “an investigation which *has not* resulted in conviction or deferred adjudication” (emphasis added). Thus, we understand you to represent this investigation is ongoing. However, sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2), (b)(2) (emphasis added). Thus, having considered your representations, we find you failed to show that the submitted information relates to a criminal case that has concluded in a final result. Accordingly, we find you have not demonstrated the applicability of section 552.108(a)(2) or section 552.108(b)(2). *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). We therefore conclude the department may not withhold any of the submitted information under section 552.108 of the Government Code.

We note the submitted video recordings contain Texas license plate numbers subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by a Texas agency. *Id.* § 552.130(a)(2). The department must redact the license plate numbers we have indicated from the submitted video recordings under section 552.130 of the Government Code.² The remaining information must be released.³

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

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

²Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information, including any portion of a video depicting a discernable Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³The remaining information includes a social security number pertaining to an individual other than the requestor’s client. 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. *See* Gov’t Code § 552.147(b). Additionally, we note portions of the audio from the video recordings being released contain certain references to information to which the requestor has a right of access as the attorney for the individual whose information is at issue. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long, sweeping underline.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 397562

Enc. Submitted documents

c: Requestor
(w/o enclosures)