



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
El Paso City Prosecutor's Office
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-16267

Dear Ms. Sandoval-Walker:

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# 398111 (PIR# 2010-08-26-AG).

The El Paso Police Department (the "department") received a request for the (1) internal affairs division disciplinary cards for five named department officers; (2) search and arrest warrant affidavits, search and arrest warrants, and search warrant returns regarding warrant numbers C09-00142 and C09-00143 and case number 09-103040; and (3) public record portions of case numbers 09-094091, 09-102131, and 405093. You state the department has no information regarding number 405093.¹ You inform us the requested disciplinary cards and the search warrant and affidavit for case number 09-102131 were provided to the requestor in response to a previous request for information. You also state the department has provided to the requestor the incident reports for case numbers 09-094091 and 09-103040, as well as the search warrants and affidavits for warrant numbers C09-00142 and C09-00143. You claim the submitted search warrant return 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 you have not submitted the requested arrest warrants and affidavits, search warrant return for warrant number C09-00143, or public record portion of case number 09-102131. To the extent information responsive to these aspects of the request

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains an arrest supplement report for a case that is not specified in the request for information. Thus, this report, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Section 552.108(a)(1) of the Government Code exempts 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 claiming section 552.108 must reasonably explain how and why the 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987).

You state the submitted search warrant return related to case number 09-103040 pertains to a pending criminal prosecution. You have provided a letter from the District Attorney for the 34th Judicial District (the “district attorney”), the entity prosecuting the criminal case, requesting the information be withheld from disclosure because release of the information would hinder the pending prosecution. Based on the district attorney’s letter and our review, we determine 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. 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). Thus, the department may withhold the submitted search warrant return related to case number 09-103040 under section 552.108(a)(1) of the Government Code.

We note you redacted social security numbers, Texas license plate numbers, and vehicle identification numbers in the remaining information. 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. Furthermore, this office 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. Open Records Decision No. 684, however, does not authorize governmental bodies to withhold vehicle identification numbers under section 552.130 of the Government Code

without the necessity of requesting an attorney general decision. As such, the marked vehicle identification numbers may not be redacted pursuant to Open Records Decision No. 684.

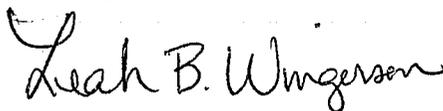
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). We note the remaining information contains a Texas driver's license number, which we have marked. Therefore, the department must withhold the marked vehicle identification numbers and Texas driver's license number under section 552.130 of the Government Code.

In summary, the department may withhold the submitted search warrant return under section 552.108(a)(1) of the Government Code, and must withhold the marked Texas driver's license number and vehicle identification numbers under section 552.130 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 398111

Enc. Submitted documents

c: Requestor
(w/o enclosures)