



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2010

Mr. James D. Parker  
Assistant City Attorney  
Knight & Partners  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2010-16515

Dear Mr. Parker:

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# 398614.

The City of Kyle (the "city"), which you represent, received a request for dashboard footage from a named officer's patrol car and the audio conversation between the officer and dispatcher during a specified incident. You state the requestor has received a copy of the audio conversation. You claim that the submitted 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, you inform us that portions of the submitted video were shown in open court during the named officer's civil service appeal. Therefore, these portions of the video constitute information that was filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this portion of the submitted information under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the portions of the submitted video that were shown in open court under section 552.108. However, section 552.130 of the Government Code is other law for purposes of section 552.022. Therefore, we will address the applicability of this exception to the submitted information. Additionally, we will address your argument under section 552.108 for the remaining portions of the video that are not subject to section 552.022.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted video relates to a pending criminal investigation by the city's police department and the Hays County District Attorney's Office. Based on your representation that the case is pending, we conclude that release of the portions of the video not subject to section 552.022 of the Government Code 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). Accordingly, the city may withhold these portions of the submitted video under section 552.108(a)(1) of the Government Code.

We note a portion of the submitted video includes a Texas license plate number that is subject to section 552.130 of the Government Code. 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[.]"<sup>1</sup> Gov't Code § 552.130. To the extent the Texas license plate number we have indicated falls within a portion of the submitted video that is subject to

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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).*

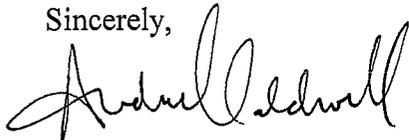
section 552.022, the city must withhold it under section 552.130 of the Government Code. We note that if the city lacks the technical capability to redact the information we have indicated in the video, the city must withhold the video in its entirety. *See* Open Records Decision No. 364 (1983).

In summary, the city may withhold the portions of the submitted video that are not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code. To the extent the Texas license plate number we have indicated falls within a portion of the submitted video that is subject to section 552.022, the city must withhold it under section 552.130 of the Government Code.<sup>2</sup> The remaining information must be released. We note that if the city lacks the technical capability to redact the information we have indicated in the video, the city must withhold the video in its entirety.

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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 398614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<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 the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.