



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2010

Mr. Robert Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-18983

Dear Mr. Hager:

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# 407541 (File Reference # 46056).

The Rowlett Police Department (the "department"), which you represent, received a request for a complete copy of any and all records pertinent to a specified arrest, including the radar reading of mph over the posted speed limit for which the arrestee was clocked and reportedly stopped, and the speeding/warning citation for the same. You state you do not have information responsive to the request for the radar reading or the speeding/warning citation.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a magistrate's warning that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. *See Gov't Code* § 552.022(a)(17). Although you seek to withhold this document under sections 552.103

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).

and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103). As such, sections 552.103 and 552.108 are not other laws that make information expressly confidential for purposes of section 552.022(a)(17). As you raise no further exceptions against the disclosure of the magistrate's warning, it must be released.

Next, as to the remaining information, we address your claim under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) 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 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). You state that release of the remaining information will interfere with a pending case. Based on this representation and our review, we conclude that section 552.108(a)(1) is generally applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note, however, that the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of this crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108. Section 552.108 also does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the DIC-24 and DIC-25 forms, and basic information, which you state has been or will be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

You also raise section 552.103 of the Government Code for the submitted DIC-24 and DIC-25 forms. Section 552.103 provides in relevant part:

²As our ruling is dispositive, we need not address your argument under section 552.101 of the Government Code.

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

Gov't Code § 552.103(a). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. Open Records Decision No. 638 at 2 (1996) (Gov't Code § 552.103 only protects litigation interests of governmental body claiming exception); *see also* Open Records Decision No. 551 at 4 (1990). The DIC-24 and DIC-25 forms pertain to a criminal investigation of the arrestee for Driving While Intoxicated. You do not submit any arguments explaining how the department is or would be a party to any prosecution of this matter. Furthermore, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a). The submitted DIC-24 and DIC-25 forms were provided to the arrestee, the only opposing party to the litigation. Therefore, the department may not withhold the DIC-24 and DIC-25 forms under section 552.103 of the Government Code.

Lastly, we note that the DIC-24 and DIC-25 forms contain a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Therefore, the department must withhold the Texas driver's license number we have marked under section 552.130.³

In summary, the marked magistrate warning must be released pursuant to section 552.022(a)(17). With the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1). However, before releasing the DIC-24 and DIC-25 forms, the department must withhold the marked Texas driver's license number under section 552.130.

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,

³This 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 driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 'Kenneth Leland Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/vb

Ref: ID# 407541

Enc. Submitted documents

c: Requestor
(w/o enclosures)