



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2011

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-04224

Dear Ms. Bull:

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# 412395 (ORR# 2833).

The Arlington Police Department (the "department") received a request for information pertaining to citation numbers 008086155-01 and 008086155-02, including the citing officer's statement and notes; both sides of the officer's copy of the citations; the officer's training records pertaining to traffic speed enforcement; information pertaining to a speed radar; and the maintenance logbook for the officer's vehicle. You argue the request is not a request for information under the Act. Alternatively, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We begin by addressing your claim that the present request was characterized as a discovery request and thus should not be considered a request for information under the Act. Section 552.0055 of the Government Code provides that "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [the Act]." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest

guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You acknowledge the present request is “not in the form of a formal motion.” You do not assert the request the department received is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Rather, you point out the request “specifically indicates that it is a request for discovery of information to be used in the trial proceedings.” Further, you assert “these informal requests for discovery are treated as motions for discovery in the Municipal Court.” However, nothing in the request reflects it meets the elements of a subpoena duces tecum. *See* Code Crim. Proc. arts. 24.02 (defining subpoena duces tecum), .03 (describing procedures for obtaining subpoenas, including subpoena duces tecum). Further, we find you have not demonstrated, and the request does not indicate, the request for information constitutes a discovery request issued in compliance with a statute or a rule of civil or criminal procedure for purposes of section 552.0055 of the Government Code. Instead, we find the department received a request for information under the Act, and we will determine whether the department is required to release the requested information pursuant to the Act.

Next, we note portions of the submitted information, which we have marked, are not responsive to the instant request for information because they were created after the instant request for information was received or do not pertain to offenses for which the specified citations were issued. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release such information in response to this request.

We also note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(3), (5). The submitted information includes payment receipts that constitute information in an account, voucher, or contract relating to the expenditure of public funds. Section 552.022(a)(3) is applicable to this information, which we have marked. The submitted information also includes estimates for repairs to a department vehicle. These estimates, which we have marked, fall within the scope of section 552.022(a)(5) of the Government Code. Information subject to section 552.022 may be withheld only if it is expressly made confidential under other law. *See id.* You argue the information at issue is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and, as such, is not other law for purposes of subsections 552.022(a)(3) and 552.022(a)(5). *See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general).* Accordingly, we conclude the department may not withhold the information subject to section 552.022 under section 552.108 of the Government Code. However, sections 552.130 and 552.136 of the Government Code are other laws for purposes of section 552.022.¹ Therefore, we will consider sections 552.130 and 552.136 for the information that is subject to section 552.022. We will also consider your argument under section 552.108 for the remaining information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find portions of the information subject to section 552.022 consist of Texas motor vehicle record information. Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

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

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).*

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(a)(1) 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); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the information not subject to section 552.022 includes a citation. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). We therefore conclude the citation, which we have marked, may not be withheld under section 552.108(a)(1). You state the remaining information not subject to section 552.022 of the Government Code relates to a pending criminal case. Based upon your representation and our review, we conclude release of the remaining information not subject to section 552.022 will 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) (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). Accordingly, we find section 552.108(a)(1) of the Government Code is generally applicable to the remaining information not subject to section 552.022.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The department must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See id.* Thus, with the exception of the basic information and the marked citation, which must be released, the department may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, the department must release the information that is subject to section 552.022 of the Government Code, which we have marked. In releasing this information, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the insurance policy number we have marked under section 552.136 of the Government Code.² With the exception of the basic information and the marked citation, which must be released, the department may withhold the remaining information under section 552.108(a)(1).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. We further note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own Texas motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987).

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,

A handwritten signature in black ink that reads "Claire Morris Sloan". The signature is written in a cursive style with a long horizontal line extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 412395

Enc. Submitted documents

c: Requestor
(w/o enclosures)