



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2011

Mr. Mark G. Daniel
Evans, Daniel, Moore, Evans & Lazarus
For the Watauga Police Department
115 West Second Street, Ste 202
Fort Worth, Texas 76102

OR2011-05133

Dear Mr. Daniel:

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# 414311 (Watauga PIA: 11-34).

The Watauga Police Department (the "department"), which you represent, received a request for ten categories of information relating to a specified incident at a specified address, including: (1) the first and last name of each officer present and their Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification numbers; (2) the first and last name of each supervisor present or responsible for supervising the officers present and their TCLEOSE identification numbers; (3) the first and last name of the officers that prepared any affidavit for a search warrant at the address; (4) a copy of the affidavit for the search warrant; (5) a complete list of all items seized or removed from the address; (6) the return of the search warrant; (7) the offense report; (8) field test results of any items seized or tested; (9) certified laboratory test results of any suspected item of contraband; and (10) all audio and video recordings made by officers during the incident. You state you have released portions of the offense report, including names of the officers and supervisors present or mentioned, the search warrant, return of the search warrant, and the search warrant affidavit, including the name of the officer who prepared the affidavit. You state the requested field test and laboratory test results do not exist.¹ You claim the

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).

remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) of the Government Code requires submission to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the written request was received, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the department received the request for information on January 21, 2011. As previously noted, you state you have released some of the requested information and that other information responsive to the request does not exist. Although you have submitted the requested offense report and audio and video recordings for our review, as of the date of this letter, you have not submitted the requested TCLEOSE identification numbers. Consequently, we find the department failed to comply with the requirements of section 552.301 with respect to the requested TCLEOSE identification numbers.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise section 552.101 of the Government Code, which can provide a compelling reason, for the requested TCLEOSE identification numbers. But, because you have not submitted the requested information for our review, we have no basis for finding this information confidential by law. Accordingly, we find the department must release the requested identification numbers to the requestor pursuant to section 552.302 of the Government Code. If you believe TCLEOSE identification numbers are confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Next, we note the submitted information includes a court-filed document. 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). We have marked the

document subject to section 552.022(a)(17). Although you seek to withhold this document under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court-filed document may not be withheld under section 552.108. However, we note a portion of the information in the court-filed document is subject to section 552.130, which is "other law" for purposes of section 552.022. Accordingly, we will consider the applicability of this exception to the court-filed document.²

The court-filed document contains Texas license plate numbers, which are subject to section 552.130 of the Government Code. Section 552.130 provides that 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. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas license plate numbers we marked under section 552.130 of the Government Code.³

We now turn to your argument against the disclosure of the remaining submitted information not subject to section 552.022 of the Government Code. Section 552.108 of the Government Code provides in pertinent part:

(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 conviction or deferred adjudication[.]

Id. § 552.108(a). We note section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) generally protects information that pertains to a specific pending criminal investigation or prosecution.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note 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.

In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

In this instance you state, and have provided documentation showing, that the submitted information relates to two pending criminal prosecutions by the Tarrant County District Attorney's Office (the "district attorney"). You also inform us the district attorney objects to the disclosure of the submitted information. Based on these representations and our review, we conclude release of the remaining 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) (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 conclude section 552.108(a)(1) is applicable to the remaining information.

We note, however, 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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the requested identification numbers. With the exception of the court-filed document and basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information we marked in the court-filed document under section 552.130 of the Government Code. The remaining information in the court-filed document 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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 414311

Enc. Submitted documents

c: Requestor
(w/o enclosures)