



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2011

Captain Greg Minton  
Leander Police Department  
705 Leander Drive  
Leander, Texas 78641

OR2011-07668

Dear Captain Minton:

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# 418980.

The Leander Police Department (the "department") received a request for the dash camera video and audio recordings connected to the arrest of a named individual for driving while intoxicated. You claim the submitted recordings are excepted from disclosure under sections 552.103, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note most of the submitted information is not responsive to the request because it is not the requested recordings. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

Next, the responsive recordings are subject to section 552.022 of the Government Code. This section provides in pertinent 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The recordings are part of a completed driving while intoxicated investigation. Pursuant to section 552.022(a)(1) of the Government Code, this information is expressly public unless it is either excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See 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 section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Consequently, the recordings may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code, we will address your argument under this exception. We will also consider your claims under sections 552.1175 and 552.130 of the Government Code because these sections are considered "other law" for purposes of section 552.022.

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 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 an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). You inform us the driving while intoxicated case against the named individual was prosecuted by the Williamson County Attorney's Office (the "county attorney"). You state this case is the subject of a current criminal appeal. However, the county attorney has represented to this office that its prosecution of this case has concluded and it does not seek to withhold the requested information under section 552.108. Thus, the department may not withhold this information under section 552.108(a)(1) of the Government Code.

You submitted the recordings from five vehicles. These recordings generally include a video track, an "In-Car" audio track, and a "VLP1" audio track. The In-Car and VLP1 audio tracks from the recording titled "4 2010-01-12 04:53:09.0," and the In-Car audio tracks from the recordings titled "6 2010-01-12 05:08:27.0," "13 2010-01-12 05:09:03.0," "10 2010-01-12 07:40:21.0," contain references to either Texas driver's license numbers, Texas license

plate numbers, or other Texas motor vehicle registration information. Section 552.130 of the Government Code 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. *See* Gov't Code § 552.130(a)(1), (2). You state the department lacks the technological ability to redact, alter or modify the recordings. We therefore conclude the department must withhold the In-Car and VLP1 audio tracks from recording 4, and the In-Car audio tracks from recordings 6, 13, and 10, in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 at 3 (1983) (finding that video tape showing booking of person into city jail was not subject to disclosure where video tape contained information excepted from disclosure and there were practical difficulties in editing the video tape to furnish non-excepted information).<sup>1</sup>

Finally, you claim portions of the recordings are protected by section 552.1175 of the Government Code. Section 552.1175 protects the home address and telephone number, social security number, or family member information of certain classes of individuals who request this information be kept confidential in accordance with section 552.1175(b). *See id.* § 552.1175(a)(1), (b). Upon review, we find the remaining information does not contain the home address and telephone number, or family member information of a licensed peace officer.<sup>2</sup> Therefore, the department may not withhold the remaining information under section 552.1175 of the Government Code. As you raise no other exceptions to the disclosure of this information, it must be released.

In summary, the department must withhold the In-Car and VLP1 audio tracks from recording 4, and the In-Car audio tracks from recordings 6, 13, and 10, in their entirety 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](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

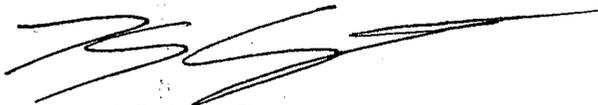
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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against disclosure.

<sup>2</sup>We note the VLP1 audio track from recording 13 references the suspect's social security number. 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 an attorney general decision under the Act. Gov't Code § 552.147(b).

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 418980

Enc. Submitted documents

c: Requestor  
(w/o enclosures)