



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 20, 2011

Mr. B. Chase Griffith  
Counsel for Town of Flower Mound  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-08697

Dear Mr. Griffith:

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# 425753.

The Flower Mound Police Department (the "department"), which you represent, received a request for information pertaining to the arrest of a named individual. You claim that the requested 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, we note the submitted information includes documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no further exceptions for the court-filed documents, they must be released.

You claim the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts "[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). Generally, a governmental body claiming section 552.108(a)(1) 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). We note that the remaining information includes a statutory warning and a notice of suspension. Because copies of these documents, which we have marked, have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. Therefore, the department may not withhold these documents under section 552.108(a)(1). You state that the remaining information at issue relates to an open and pending criminal case. Based upon your representation and our review, we conclude that the release of the remaining information at issue 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1).

We note that the statutory warning and the notice of suspension both contain information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). Upon review, we find the department must withhold the Texas driver’s license numbers we have marked in the statutory warning and the notice of suspension under section 552.130 of the Government Code.<sup>2</sup>

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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).

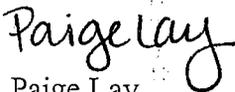
<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must release the information we have marked under section 552.022(a)(17) of the Government Code. With the exception of the statutory warning, notice of suspension and basic information the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license numbers we have marked in the statutory warning and the notice of suspension under section 552.130 of the Government Code.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eb

Ref: ID# 425753

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)