



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2011

Mr. Robert Almonte  
Assistant City Attorney  
El Paso City Prosecutor's Office  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901-2516

OR2011-09207

Dear Mr. Almonte:

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# 422684.

The El Paso Police Department (the "department") received a request for all records from a specified time period of the maintenance and repair of the audio and video recording device used by two named officers during the detention and arrest of a named individual; the Standard Field Sobriety Test certifications for the two named officers; any department regulation regarding the video and audio taping of persons detained for DWI offenses; a color copy of the booking picture of the arrested individual; and any and all complaints on the two named officers. You state the department has released some of the responsive information with redactions. You also state the department has no records responsive to a portion of the request.<sup>1</sup> You claim that the remaining information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted certain information subject to section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). Open Records Decision No. 684 serves as a previous determination to all

---

<sup>1</sup>The 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).

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. We note, however, that Open Records Decision No. 684 does not permit a governmental body to withhold a vehicle identification number without requesting a ruling from this office. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code § 552.302.*

We understand you to assert the submitted excerpts from the department's procedure manual are excepted from disclosure under section 552.108. 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" 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 Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A).* You state, and provide a letter from the Office of the District Attorney for the 34th Judicial District representing, that the submitted information at issue relates to a pending prosecution, and that the release of such information would interfere with law enforcement or prosecution. Based on this representation, 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.*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the submitted excerpts from the department's procedure manual under section 552.108(a)(1) of the Government Code.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 30, 1997, 75<sup>th</sup> Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 amended by 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(a)). Accordingly, the department must withhold the vehicle identification number you have marked under section 552.130 of the Government Code.

In summary, the department may withhold the submitted excerpts from the department's procedure manual under section 552.108(a)(1) of the Government Code. The department must withhold the vehicle identification number 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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 422684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)