



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Mr. Robert Almonte
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-09401

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# 422665.

The El Paso Police Department (the "department") received a request for all information pertaining to a specified incident, including: (1) all maintenance and repair records for a specified time period of a named officer's audio and video recording device that was used during the specified incident; (2) the Standardized Field Sobriety Testing certifications for the named officer; (3) any department regulation regarding video and audio taping of an individual detained for Driving While Intoxicated offenses; (4) a color copy of the booking picture of a named individual; and (5) any complaints against the named officer. You state the department has released the information requested in items two, four, and five of the request. You also state the department does not possess any information responsive to item one of the request. We note the Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). You claim that the remaining requested 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.

Section 552.108(a) 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[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide documentation from the Office of the District Attorney for the 34th Judicial District (the “district attorney”) representing, that the information at issue in Exhibit B relates to a case that is currently pending investigation and prosecution by the district attorney. Based upon these representations and our review, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime; thus, section 552.108(a)(1) is applicable, and the department may withhold the information at issue on this basis. *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).

We note you have redacted portions of the submitted information under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).¹ However, we note the vehicle identification number you have redacted is not subject to Open Records Decision No. 684 and may not be redacted without requesting an attorney general decision. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Act of May 24, 2011, 82nd 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 vehicle identification number you have marked and the additional information we have marked under section 552.130.

In summary, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. The department must withhold the vehicle identification number you have marked and the additional information we have marked 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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at

¹Open Records Decision No. 684 serves as 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.

(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 "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 422665

Enc. Submitted documents

c: Requestor
(w/o enclosures)