



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Mr. Tuan Nguyen
Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2011-12628

Dear Mr. Nguyen:

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# 429720 (OR# 11-3498).

The Houston Police Department (the "department") received a request for a specified incident report.¹ You claim the submitted information is excepted from disclosure under sections 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108 provides, in relevant 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:

¹You state, and provide documentation showing, the department sought and received clarification of the request. See Gov't Code § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). See also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In your comments to this office, you quote the language from section 552.108(a)(2). As previously stated, this section pertains to concluded criminal investigations that did not result in conviction or deferred adjudication. You state, however, the submitted information pertains to a pending criminal investigation. Because you have provided this office with contradictory information, we find you have failed to sufficiently demonstrate the applicability of section 552.108. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the department may not withhold the submitted information under either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code. As you raise no additional exceptions to disclosure for the submitted report, it must be released to the requestor.²

²We note the information being released contains the requestor's (1) driver's license number, which is generally confidential under section 552.130 of the Government Code and (2) social security number, which may generally be withheld under section 552.147 of the Government Code. However, because sections 552.130 and 552.147 protect personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We also note Open Records Decision No. 684 (2009) is 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, without the necessity of requesting an attorney general decision. Further, section 552.147(b) 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. Accordingly, should the department receive another request for this information from a different requestor, the department is authorized to withhold the driver's license number and social security number at issue without requesting an opinion from this office.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 429720

Enc. Submitted documents

c: Requestor
(w/o enclosures)