



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2011

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

OR2011-16217

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# 435137 (Houston OR#11-4411).

The Houston Police Department (the "department") received a request for three specified incident reports. You claim that the submitted 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 you have submitted only one of the three requested incident reports. Thus, to the extent the remaining two requested incident reports existed and were maintained by the department on the date the department received the request for information, we presume the department has released them. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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:

(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.

We note a portion of the information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas, another state, or another 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(a)). We find the department must withhold the driver's license number we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. As you raise no additional exceptions to disclosure for the remaining information, it must be released to the requestor.<sup>2</sup>

---

<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 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 his 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 own information). We note section 552.130(c) of the

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 435137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified as Gov't Code § 552.130(c)). Additionally, we note 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 a decision from this office under the Act. Gov't Code § 552.147(b). Thus, if the department receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) authorize the department to redact the driver's license number and social security number, respectively.