



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2011

Mr. Benjamin Sampract  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-16617

Dear Mr. Sampract:

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# 436170 (PIR No. W011274).

The City of Fort Worth (the "city") received a request for information related to a specified incident involving a named individual. You inform us the city has released the responsive Texas Peace Officer's Crash Report.<sup>1</sup> You state social security numbers will be redacted from other responsive information pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You also state driver's license and motor vehicle information will be withheld under section 552.130 of the Government Code pursuant to Open Record Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).<sup>3</sup> You claim the submitted information is excepted from

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<sup>1</sup>See Transp. Code § 550.065(c)(4) (accident report must be released to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident).

<sup>2</sup>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 a decision from this office under the Act.

<sup>3</sup>Open Records Letter Nos. 2006-14726 and 2007-00198 are previous determinations issued to the city authorizing it to withhold certain driver's license, motor vehicle, and personal identification information under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. We note, however, the Texas legislature amended section 552.130 effective September 1, 2011, to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code superseded Open Records Letter Nos. 2006-14726 and 2007-00198 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198.

disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note the city did not comply with section 552.301(e) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is exempted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(B) requires the governmental body to submit a copy of the request for information to this office not later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us the city received the present request for information on August 25, 2011; therefore, the city's fifteen-business-day deadline under section 552.301(e) was September 16. The city did not submit a copy of the request to this office until September 19. Thus, the city did not comply with section 552.301 in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city claims section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Tarrant County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue. Therefore, we will determine whether the city may withhold the submitted information on behalf of the district attorney under section 552.108.

We also note the submitted information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Thus, the court documents we have marked are subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to

waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). Therefore, the city may not withhold the marked court documents under section 552.108 of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted information. Section 552.108(a)(1) excepts from disclosure “[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). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided an affidavit from the district attorney’s office stating that release of the remaining information would interfere with a pending criminal prosecution. Based on the affidavit, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note the remaining information includes a statutory warning and a notice of suspension, which we have marked. Because copies of those documents are provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and the notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the city may not withhold the statutory warning and the notice of suspension under section 552.108.

We also note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The city must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information, the statutory warning, and the notice of suspension, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Lastly, we note the statutory warning and the notice of suspension contain the arrested person’s driver’s license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country.<sup>4</sup> *See* Act of May 24, 2011, 82<sup>nd</sup>

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<sup>4</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

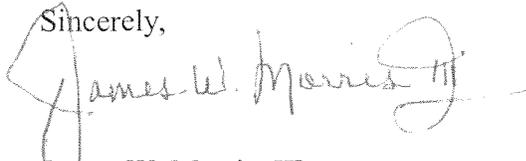
Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The city must withhold the driver's license number contained in the statutory warning and the notice of suspension under section 552.130 of the Government Code.

In summary, the city (1) must release the marked court documents pursuant to section 552.022(a)(17) of the Government Code; (2) may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the statutory warning, the notice of suspension, and basic information under section 552.108(c); (3) must withhold the driver's license number contained in the statutory warning and the notice of suspension under section 552.130 of the Government Code; and (4) must release the remaining information in the statutory warning and the notice of suspension.

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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 436170

Enc: Submitted documents

c: Requestor  
(w/o enclosures)