



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2012

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2012-02736

Dear Mr. Scott:

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# 446242 (City ID# 509).

The Wichita Falls Police Department (the "department") received a request for information concerning a certain impounded vehicle and a specified case. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted has been filed with a court. That information, which we have marked, is considered public information and is not excepted from disclosure "unless made confidential under [the Act] or other law." Gov't Code § 552.022(a)(17). Although you seek to withhold this information under sections 552.103 and 552.108, we note these are discretionary exceptions to disclosure and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the department may not withhold the information we have marked subject to section 552.022 under section 552.103 or section 552.108 of the Government Code. We note, however, some of these records

contain information that is subject to section 552.130 of the Government Code.¹ As section 552.130 makes information confidential for purposes of section 552.022, we will consider its applicability to the information at issue. We also will consider your arguments under sections 552.103 and 552.108 of the Government Code for the remaining information not subject to section 552.022 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.² As the department raises no other exceptions for the information subject to section 552.022, that remaining information must be released.

We turn next to the remaining information not subject to section 552.022 of the Government Code. 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to a pending case and release of the information would interfere with the investigation and prosecution of that case. *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). Based on your representations and our review, we agree section 552.108(a)(1) of the Government Code is applicable.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87; *see Open Records Decision No. 127* (1976) (summarizing types of information deemed public by

¹The 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).

²We note the requestor has a special right of access under section 552.023 of the Government Code to her own motor vehicle registration information. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). If the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

Houston Chronicle). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the department must release the information we have marked under section 552.022(a)(17) of the Government Code. However, the department must withhold the information we have marked under section 552.130 of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/agn

Ref: ID# 446242

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your other argument against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

⁴We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code permits the department to withhold the social security number of a living person without requesting a decision from this office. Gov't Code § 552.147(b).