



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-03714

Dear Ms. Evans:

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# 451469 (GC No. 19353).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first 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 made confidential under the Act or 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 does not make information confidential under the Act. *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). Therefore, the marked court documents may not be withheld under section 552.108 of the Government Code. We note, however, that

some of the information subject to section 552.022 contains motor vehicle record information subject to section 552.130 of the Government Code.¹ As this exception can make information confidential for purposes of section 552.022, we will address its applicability.

Section 552.108 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 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 state that the remaining information not subject to section 552.022 of the Government Code relates to a pending criminal investigation. Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to this 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is generally applicable to the remaining information not subject to section 552.022.

We note the remaining information not subject to section 552.022 includes a citation. Because a copy of this document is provided to the person who is the subject of the citation, we find release of the this document will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the citation 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information and the citation, the department may withhold the remaining information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

Lastly, we note the court documents subject to section 552.022 of the Government Code and the citation contain motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted

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).

from public release. See Gov't Code § 552.130(a)(1)-(2). The department must generally withhold the information we have marked under section 552.130 of the Government Code. We note, however, the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains to a deceased individual may not be withheld under section 552.130. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229, H-917 (1976); ORD 272 at 1. We note that some of the Texas motor vehicle information at issue relates to a vehicle that was owned by an individual who is now deceased. Accordingly, the information that pertains to the deceased individual may only be withheld under section 552.130 if a living person owns an interest in the vehicle at issue. If no living person owns an interest in the vehicle, then the marked information relating to that vehicle is not excepted from disclosure and must be released. Furthermore, the requestor in this instance appears to be the insurance provider for the other individual whose information is at issue. If this requestor is acting as the individual's authorized representative, then she has a right of access to her insured's marked Texas motor vehicle record information and his information may not be withheld under section 552.130. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual).

In summary, except for the motor vehicle record information we have marked, which the department must conditionally withhold under section 552.130 of the Government Code, the department must release the court documents we have marked under section 552.022(a)(17) of the Government Code. Except for basic information and the citation, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must release the citation, except for the information we have marked conditionally under section 552.130 of the Government Code.²

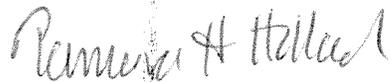
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address your remaining argument.

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, appearing to read "Tamara H. Holland".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 451469

Enc. Submitted documents

c: Requestor
(w/o enclosures)