



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Mr. Whitt L. Wyatt
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2012-04342

Dear Mr. Wyatt:

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# 448695 (Allen Ref. No. 53362).

The Allen Police Department (the "department"), which you represent, received a request for all dash camera video from a specified date corresponding to a specified department officer's vehicle. You claim that 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 have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we must address the requestor's assertion that the department did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See* Gov't Code § 552.301(b). The requestor states that he hand-delivered the request for information on December 23, 2011. You state the requestor mailed the request on December 29, 2011, and that it was received on January 3, 2012. The department requested a ruling from this office on January 16, 2012. The determination of the date the department received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to

us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on your representations, we conclude the department complied with the requirements of section 552.301 of the Government Code. Therefore, we will consider the department's arguments against disclosure of the submitted information.

You state, in response to a previous request, the department released to the requestor a portion of the information, which you have labeled CD #1482, that you now seek to withhold. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, by previously releasing CD #1482 to the requestor, the department has waived its claim under section 552.108 for that information and may not withhold any of CD #1482 under section 552.108 of the Government Code. However, you also raise section 552.101 of the Government Code, which makes information confidential by law. Thus, regardless of whether the department previously released CD #1482, we must address whether the information is made confidential by law and must now be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality).

Section 552.108 of the Government Code 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, subsection 552.108(a)(1) is mutually exclusive of subsection 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).

You state the responsive videos contain information pertaining to several traffic stops and other crimes which have not yet been fully investigated and have not resulted in a conviction or deferred adjudication. Additionally, you state you “have not fully investigated which portions of the video pertain to pending investigations and/or cases.” Because you have raised contradictory subsections and have not specified which portions of the information at issue pertain to pending investigations or cases and which pertain to closed investigations or cases, we find you have failed to demonstrate the applicability of section 552.108 to the information at issue. *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 information at issue under either subsection 552.108(a)(1) or subsection 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country.¹ Gov't Code § 552.130(a)(2). Upon review, we find the department must withhold the license plate numbers we have indicated in the submitted dash camera videos under section 552.130 of the Government Code. The remaining information must be released.

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,

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).*

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 black ink, appearing to read "C Galindo Jr.", written in a cursive style.

Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 448695

Enc. Submitted documents

c: Requestor
(w/o enclosures)