



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2012

Mr. Robert E. Hager  
For City of Rowlett  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201

OR2012-05971

Dear Mr. Hager:

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# 451890 (Rowlett ID# 54071).

The Rowlett Police Department (the "department"), which you represent, received a request for a specified incident report. You state you are redacting social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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<sup>1</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. *See* Gov't Code § 552.147(b).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is part of a completed investigation that is subject to subsection 552.022(a)(1). The department must release the submitted information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37* (providing for “confidentiality” of information under specified exceptions); *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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, section 552.130 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of sections 552.108 and 552.130 to the submitted information.

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 individual at issue in the submitted information was charged and is currently on probation. Thus, you argue the submitted information is excepted from disclosure under section 552.108(a)(1) until the probation term has been completed. We find, however, as the defendant has entered a plea and received a sentence, neither the investigation nor prosecution on the matter is pending. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. 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, we find the department may not withhold the submitted information under section 552.108(a)(1) of the Government Code.

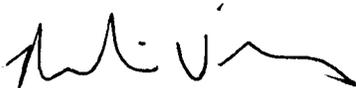
Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Therefore, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government

Code. As you raise no further arguments against disclosure of the remaining information, it 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](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 black ink, appearing to read 'Melanie J. Villars', with a stylized flourish at the end.

Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/dls

Ref: ID# 451890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)