ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Mr. Jason Day
City Attorney
City of Royse City
P.O. Box 638
Royce City, Texas 75189

OR2012-07306

Dear Mr. Day:

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# 453796 (RCCA12-0056).

The City of Royse City (the "city") received a request for a specified incident report. You state you have made some of the requested information available to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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 comments stating why information should or should not be released).

Initially, the requestor contends the city has not released to her any portion of the documentation requested. Whether the city actually provided any portion of the information at issue is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). Thus, we assume the city has released to the requestor any information for which the city is not claiming an exception. If not, the city must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body

concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 submitted information relates to a pending criminal investigation, and release of the information you have marked could interfere with the ongoing investigation. Based on this representation, we determine section 552.108(a)(1) is applicable to the information you have marked. *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 curium*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information you have marked under section 552.108(a)(1).

You state you will redact some information under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).[1] Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, another state, or country is excepted from public release. Gov't Code § 552.130(a). We find the city must generally withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. However, we note the information at issue belongs to the requestor's husband. Section 552.130 is based on privacy principles; as such, the requestor may have a right of access to her husband's private information as his authorized representative. *See id.* § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals

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[1]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130(a)(1) and Texas license plate numbers under section 552.130(a)(2), without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 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* 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 id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 superceded Open Records Decision No. 684 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 Decision No. 684.

request information concerning themselves). Furthermore, the requestor may own an interest in the vehicle at issue, and therefore have a right of access to her own motor vehicle record information. *Id.* Thus, to the extent the requestor has a right of access to the information at issue, the city may not withhold this information from this requestor. Conversely, to the extent the requestor is not acting as her husband's authorized representative and does not otherwise have a right of access to the marked motor vehicle record information, the city must withhold this information under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147. You state the city will redact the arrestee's social security number you have marked pursuant to section 552.147(b).[2] Accordingly, the city may generally withhold the arrestee's social security number under section 552.147. However, as previously noted, the requestor is the arrestee's wife and may be acting as an authorized representative for her husband. In that case, the requestor has a right of access to the social security number of the arrestee, and it may not be withheld from her under section 552.147. *See id.* § 552.023(a).

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the requestor is not acting as her husband's authorized representative and does not otherwise have a right of access to the marked information, the city must withhold the marked motor vehicle record information under section 552.130 of the Government Code. To the extent the requestor is not acting as her husband's authorized representative, the city may withhold the arrestee's social security number under section 552.147 of the Government Code. The city must release the remaining information.[3]

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

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[2]Section 552.147(b) of the Government Code 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. Gov't Code § 552.147(b).

[3]We note that the requestor may have a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023; ORD 481. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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,

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 453796

Enc. Submitted documents

c: Requestor
(w/o enclosures)