



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 22, 2012

Mr. Matthew C. G. Boyle  
Assistant City Attorney  
Boyle & Lowry, L.L.P.  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2012-13288

Dear Mr. Butler and Mr. Boyle:

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# 462666.

The Bedford Police Department (the "department"), which you represent, received a request for eleven categories of information pertaining to a specified motor vehicle accident, including a specified crash report. You claim that 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 must address the department's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). You state the department received the request for information on June 5, 2012. Accordingly, the department's ten-business-day deadline was June 19, 2012. While you raised section 552.103 of the Government Code within the ten-business-day time period required by subsection 552.301(b), you did not raise section 552.108 of the Government Code until June 26, 2012. Consequently, we find the department failed to comply with the procedural requirements of section 552.301(b) of the Government Code with respect to its arguments under section 552.108.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also generally* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to timely raise section 552.108 for the submitted information, the department has waived its argument under that section. We note, however, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991). You represent that the Tarrant County District Attorney's Office (the "district attorney's office") asserts an interest in the submitted information. Therefore, we will determine whether the department may withhold the submitted on behalf of the district attorney's office under section 552.108. We will also consider your timely raised claims under section 552.103 of the Government Code.

Next, we note you have not submitted the requested crash report for our review. To the extent the crash report existed on the date the department received the request, we assume you have released it. If you have not released any such information, you 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).

Further, we note the submitted information includes search warrants that are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) 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). Although the department and the district attorney's office seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections 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); ORDs 177 at 3 (statutory predecessor to section 552.108 subject to waiver), 665 at 2 n.5 (discretionary exceptions generally). Therefore, the department may not withhold these search warrants, which we have marked, under section 552.103 or section 552.108. However, we note portions of this information are subject to section 552.130 of the Government Code, which makes information confidential under the

Act.<sup>1</sup> Therefore, we will address the applicability of section 552.130 to the information subject to section 552.022(a)(17).

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the department must withhold the information we have marked under section 552.130. As you raise no additional exceptions to disclosure for the remaining information subject to section 552.022(a)(17), it must be released to the requestor.

Section 552.108 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[.]" *Id.* § 552.108(a)(1). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney's office states the information at issue pertains to a pending criminal prosecution. Based on this representation and our review of the information, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes 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) of the Government Code generally applies to the remaining information.

We note, 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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state you have released, the department may withhold the remaining information on behalf of the district attorney's office under section 552.108(a)(1).

In summary, the department must release the information we have marked under section 552.022(a)(17) of the Government Code. In releasing that information, the department must withhold the information we have marked under section 552.130 of the Government Code. With the exception of basic information, which must also be released,

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the department may withhold the remaining information on behalf of the district attorney's office under section 552.108(a)(1) of the Government Code.

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/som

Ref: ID# 462666

Enc. Submitted documents

c: Requestor  
(w/o enclosures)