



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-17582

Dear Ms. Thornton:

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# 470077 (CAO File No. 12PIA0416).

The Harris County Constable's Office, Precinct 5 (the "constable's office") received a request for reports filed by the requestor involving a named individual. You claim 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.

You raise section 552.108 of the Government Code, which provides, in pertinent 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). Subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. Generally, a governmental body claiming section 552.108 must reasonably show that the exception is applicable to the requested information by explaining how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 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. However, you have provided an affidavit attached as Exhibit C from an employee of the constable's office stating the submitted information pertains to a case that was dismissed, and therefore concluded in a result other than conviction or deferred adjudication. Because of these contradictory representations, we find you have failed to sufficiently 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). Consequently, the constable's office may not withhold the submitted information under section 552.108.

We note the submitted information includes information subject to sections 552.130 and 552.137 of the Government Code.¹ Section 552.130(a)(1) provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Therefore, the constable's office must withhold the driver's license number we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of the type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not of the types specifically excluded by subsection 552.137(c). Accordingly, the constable's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owner of the addresses affirmatively consents to their release.

In summary, the constable's office must withhold the driver's license number we have marked under section 552.130 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of the e-mail

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

addresses affirmatively consents to their release. The remaining information must be released.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 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 470077

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because this requestor has a right of access under section 552.023 of the Government Code to information being released that may be confidential with respect to the general public, if the constable's office receives another request for this particular information from a different requestor, then the constable's office should again seek a decision from this office. We further note the information being released contains social security numbers. 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). However, we note the requestor has a right of access to her own social security number. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests).