



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2013

Sergeant Michael Munson  
Custodian of Records  
Webster Police Department  
217 Pennsylvania Avenue  
Webster, Texas 77598

OR2012-17773A

Dear Sergeant Munson:

Our office issued Open Records Letter No. 2012-17773 (2012) on November 6, 2012. In that ruling, we found, in part, the Webster Police Department (the "department") must withhold the motor vehicle record information we marked and indicated and any discernible license plate numbers in the submitted video recordings under section 552.130 of the Government Code, to the extent the requestor does not have a right of access to this information. In a subsequent communication with our office, you informed us the department lacks the technological capability to redact this information from the video recordings. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 6, 2012. *See Gov't Code § 552.011* (providing Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 478719.

The department received two requests from the same requestor for all information related to a specified case. 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.

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:

...

(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[.]

*Id.* § 552.108(a)(2). 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 submitted information pertains to a pending criminal case. We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). Thus, having considered your representation, we find you have not demonstrated how the information at issue falls within the scope of section 552.108(a)(2). We therefore conclude the department may not withhold any of the submitted information under section 552.108(a)(2) of the Government Code.

We note some of the submitted information is subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> *See id.* § 552.130(a)(1)-(2). The audible and discernible driver’s license and license plate numbers in the submitted video recordings are subject to section 552.130. You inform us the department does not have the technological capability to redact the portions of the video recording that contain the audible and discernible driver’s license and license plate numbers at issue. Based on this representation, we conclude the department must withhold the video recording in its entirety under section 552.130 of the Government Code. *See Open Records Decision No. 364 at 2 (1983)*. We have marked additional information under section 552.130. Accordingly, the department must generally withhold the information we have marked under section 552.130 of the Government Code. We note, however, the requestor may be acting as the authorized representative of the individual named in the request; therefore, he may have a right of access under section 552.023 of the Government Code to any information the department would

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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)*.

otherwise be required to withhold from the public to protect this individual's privacy. *See* Gov't Code § 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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative requests information concerning that individual). Thus, if the requestor is acting as the named individual's authorized representative, he has a right of access to the named individual's motor vehicle record information, and this marked information may not be withheld from him 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 478719

Enc. Submitted documents

c: Requestor  
(w/o enclosures)