



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2012

Mr. David V. Overcash
Wolfe, Tidwell & McCoy, L.L.P.
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2012-20595

Dear Mr. Overcash:

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# 474563 (City File No. C04006PIR20121002-01).

The City of Aubrey (the "city"), which you represent, received a request several categories of information relating to three specified incidents.¹ You state you have no information pertaining to some of the requested categories of information.² You state the city has released some of the requested information with a driver's license number redacted under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).³ You claim that the submitted information is excepted from disclosure

¹You inform us the city sought and received clarification from the requestor regarding the portions of the requested information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990).

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including Texas driver's license numbers under section 552.130(a)(1). However, the Texas legislature amended section 552.130 effective September 1, 2011, 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 Thus, the statutory amendment to section 552.130 superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.130(a)(1) in accordance with section 552.130, not Open Records Decision No. 684.

under section 552.108 of the Government Code. We have considered the exception you claim and reviewed 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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have submitted an affidavit from the city’s police chief confirming, report number 12-0324 relates to a pending criminal investigation. Based on these representations and our review, we find release of the information you have marked in report number 12-0324 would interfere with the detection, investigation, or prosecution of crime. *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 curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state, and have submitted an affidavit from the city’s police chief confirming, report number 12-0333 pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to report number 12-0333 and the related video recording. Therefore, the city may withhold the information you have marked and the related video recording under section 552.108(a)(2).

In summary, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code and the information you have marked and the related video recording under section 552.108(a)(2) 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, 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 'Sarah Casterline', with a large, stylized flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 474563

Enc. Submitted documents

c: Requestor
(w/o enclosures)