



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2013

Ms. Rachel Saucier
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2013-07967

Dear Ms. Saucier:

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# 487311 (ORR No. 2013-84).

The Georgetown Police Department (the "department") received a request for specified information pertaining to a traffic stop involving the requestor and certain information related to the ticketing police officer's vehicle. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.¹ You also state release of some of the submitted information may implicate the proprietary interests of L3 Mobile-Vision, Inc. ("Mobile-Vision"). Accordingly, you notified Mobile-Vision of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and

¹Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the requested information relates to an investigation that concluded in a result other than 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). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted audio and video recordings from the traffic stop and that information may be withheld under section 552.108(a)(2).³ We note the remaining information, a user's manual for a recording system, constitutes an internal department record. You do not provide any arguments explaining how this information directly deals with the law enforcement, detection, investigation, or prosecution of a crime that has concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2) (protecting information dealing with investigation of crime only in relation to investigation that did not result in conviction or deferred adjudication), (b)(2) (protecting internal record if relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication). Therefore, we find the department has failed to demonstrate the applicability of subsections 552.108(a)(2) and (b)(2) to the remaining information and the remaining information may not be withheld pursuant to subsections 552.108(a)(2) and (b)(2).

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Mobile-Vision. Thus, Mobile-Vision has failed to demonstrate that it has a protected proprietary interest in any of the remaining information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5–6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the remaining information on the basis of any proprietary interest Mobile-Vision may have in the information. As no other arguments have been raised, the department must release the remaining information.

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,

³As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 487311

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Powers
L3 Mobile-Vision, Inc.
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Boonton, New Jersey 07005
(w/o enclosures)