



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2013

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2013-13219

Dear Ms. Pemberton:

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# 494835 (Request Nos. W010697 and W010942).

The Killeen Police Department (the "department") and the City of Killeen (collectively, the "city"), received two requests from the same requestor for information pertaining to an incident involving his client's vehicle. The first request, submitted to the department, seeks the department's policies, procedures, and regulations pertaining to the impoundment of vehicles and seizure of vehicles as evidence of a crime; documents generated by the department, including photographs, pertaining to a specified vehicle belonging to the requestor's client; evidence and property control forms; documents reflecting the inspection of the vehicle by the department; documents reflecting the condition of the vehicle; documents reflecting the mileage of the vehicle; and documents pertaining to use of the vehicle by the department's law enforcement personnel. The second request, submitted to the city, seeks the same information as the first request, and the city's impoundment policy. You claim the information submitted in response to the first request is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. You claim the information submitted in response to the second request is excepted from disclosure under sections 552.103, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision with respect to the second request. *See* Gov't Code § 552.301(b), (e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 at 2 (1977). You explain most of the information submitted in response to the second request is identical to the information submitted in response to the first request. Although you raise section 552.103 of the Government Code for the identical information in responding to the second request, we note you did not raise section 552.103 in responding to the first request. Further, you assert the additional information submitted in response to the second request is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; *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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). In failing to comply with the requirements of section 552.301, you have waived the city's claims under section 552.103 with respect to the information submitted in response to both requests, and under section 552.108 with respect to the additional information submitted in response to the second request. Accordingly, the city may not withhold any of the submitted information under section 552.103, and may not withhold the additional information submitted in response to the second request under section 552.108. However, we will address your timely submitted arguments.

Next, we note some of the information, which we have marked, consists of records that have been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See* ORDs 665 at 2 n.5, 177 at 3. Thus, the city may not withhold the court-filed documents we have marked under section 552.108 of the Government Code. We note, however, the court

filed documents contain information subject to section 552.130 of the Government Code.¹ Because section 552.130 does make information confidential, we will address its applicability to the information subject to section 552.022 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle registration information we have marked in the court-filed documents under section 552.130 of the Government Code. The remainder of the court-filed documents must be released.

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[.]” *Id.* § 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us some of the submitted information pertains to a pending criminal prosecution. Based on your representation and our review, we conclude the release of the information at issue 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). Therefore, we find section 552.108(a)(1) is applicable to this information.

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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the identity of the complainant and a detailed description of the offense, but does not include information protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.²

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

²As our ruling for this information is dispositive, we do not address your remaining argument against its disclosure.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police city, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution).

You inform us some of the remaining information provides details of the seizure database, which identifies and track articles submitted for seizure. You explain the policies at issue also provide details of the seizure file, which outline the creation and contents of the file used to document and track the seizure activity of property through the legal process. You state this information is not known to the public and its release would unduly complicate law enforcement efforts of the city by exposing the city’s process for seizing and tracking seized property. Based on your representations and our review, we find the information we have marked would interfere with law enforcement and crime prevention. Thus, the city may withhold this information under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated the release of the remaining information at issue would interfere with law enforcement or crime prevention. Consequently, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

In summary, with the exception of the motor vehicle record information we have marked under section 552.130 of the Government Code, the city must release the court-filed documents we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city may withhold the

information we have marked under section 552.108(b)(1) of the Government Code. The city must release the remaining information.³

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/som

Ref: ID# 494835

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released includes motor vehicle record information belonging to the requestor's client, which the city would be required to withhold from the general public under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). Thus, if the city receives another request for this same information from a person who would not have a right of access to the requestor's client's information, section 552.130(c) authorizes the city to redact her motor vehicle record information without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c).