



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2013

Ms. Evelyn W. Njuguna  
Staff Attorney  
City of Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2013-18625

Dear Ms. Njuguna:

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# 502213 (Houston ORU No. 13-4566).

The Houston Police Department (the "department") received a request for all audio and video recordings created by a named department officer while on duty on April 2, 2013. You inform us you will release some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 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 state, and provide documentation showing, the videos in Exhibit 3 pertain to open and active criminal prosecutions. Based upon this representation, we conclude section 552.108(a)(1) is applicable and the release of Exhibit 3 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). Accordingly, the department may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(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. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the videos in Exhibit 4 pertain to criminal prosecutions that were dismissed, and, therefore, did not result in conviction or deferred adjudication. Upon review, we agree section 552.108(a)(2) is applicable to most of the videos in Exhibit 4. Therefore, except for the two videos we have marked, the department may withhold Exhibit 4 under section 552.108(a)(2) of the Government Code.<sup>2</sup>

However, the submitted documentation reflects that the incidents at issue in the two remaining videos in Exhibit 4 were subject to deferred disposition for which orders of dismissal were signed after the date the request was received. Therefore, we understand that the terms of the deferred disposition for these two cases were not completed when the request was received, and the cases could have resulted in a conviction or deferred adjudication. Accordingly, we are unable to determine these two videos pertain to cases which concluded in a result other than conviction or deferred adjudication at the time the request was received. Therefore, the department may not withhold these two videos under section 552.108(a)(2) of the Government Code.

Section 552.119 of the Government Code provides the following:

- (a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

*Id.* § 552.119. You explain the remaining videos contain images of a police officer the department may call on to work in an undercover capacity and, thus, release of the images may endanger the officer's life and physical safety. You inform us the officer at issue has not consented to the disclosure of his image. Based on these representations, we agree the department must withhold the images of the police officer in the remaining videos under section 552.119 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release.<sup>3</sup> *Id.* § 552.130(a)(2). Upon review, we find the department must withhold the portions of the remaining videos we have indicated under section 552.130 of the Government Code.

In summary, the department may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code and, except for the videos we have marked, may withhold Exhibit 4 under section 552.108(a)(2) of the Government Code. The department must withhold the images of the police officer in the remaining videos under section 552.119 of the Government Code and the portions of the remaining videos we have indicated under section 552.130(a)(2) of the Government Code. 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.texasattorneygeneral.gov/open/>

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/tch

Ref: ID# 502213

Enc. Submitted documents

c: Requestor  
(w/o enclosures)