



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2013

Ms. DeeAnna Looney  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2013-20449

Dear Ms. Looney:

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# 506544 (PIR# 13-3499).

The Texas Department of Public Safety (the "department") received a request for six categories of information pertaining to a specified arrest. You state some of the requested information does not exist.<sup>1</sup> You also state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. Gov't Code § 552.301(b). You state the department received the request at issue on September 4, 2013. Therefore, the department's deadline for requesting a decision from

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or 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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

this office was September 18, 2013. However, this office did not receive the department's request for ruling until September 19, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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 (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); *also see* Open Records Decision No. 630 (1994). Although you raise section 552.108 of the Government Code as an exception to disclosure, this section is a discretionary exception that only protects a governmental body's interest and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body, other than the one failing to comply with section 552.301, can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You state the Van Zandt County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue. Therefore, we will determine whether the department may withhold the information at issue on behalf of the district attorney's office under section 552.108. Further, because section 552.130 can provide a compelling reason to withhold information, we will address the applicability of section 552.130 to 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 the district attorney's office objects to release of the information at issue because charges are pending against the arrestee at issue in the submitted information. Based upon this representation, we find release of the information you have marked 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 the

information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Section 552.130 of the Government Code excepts from disclosure information that relates 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. Gov't Code § 552.130(a)(1)-(2). We note you have marked the requestor's client's driver's license number, to which he has a right of access pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that 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 requests information concerning herself). Accordingly, the department may not withhold this information, which we have marked for release, from this requestor under section 552.130 of the Government Code. Thus, with the exception of the information we have marked for release, the department must generally withhold the information you have marked under section 552.130 of the Government Code. However, we note you have marked license plate information that may belong to the requestor's client. If the marked license plate information belongs to the requestor's client, the requestor has a right of access to this information pursuant to section 552.023. However, if the marked license plate information does not belong to the requestor's client, the requestor has no such right of access, and the department must withhold the marked license plate information under section 552.130 of the Government Code.

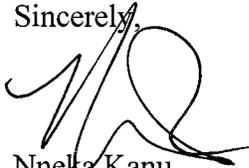
In summary, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. With the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.130 of the Government Code. However, if the marked license plate information belongs to the requestor's client, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code, and it must be released. 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/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to be 'Nneka Kanu', written over the word 'Sincerely,'.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/akg

Ref: ID# 506544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)