



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2014

Mr. Richard A. McCracken  
Counsel for the City of Watauga  
Evans, Daniel, Moore, Evans & Lazarus  
115 West Second Street, Suite 202  
Fort Worth, Texas 76102

OR2014-09432

Dear Mr. McCracken:

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# 527819 (Watauga Request # 14-142).

The Watauga Police Department (the "department"), which you represent, received a request for seven categories of information relating to a specified incident. You state you have provided the requestor with some of the requested information. You further state you have no responsive information for two categories of the request.<sup>1</sup> You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, the department informs us portions of the audio/video recordings in Exhibits C through E are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp.*, 562 S.W.2d 266.

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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).

Next, we note the submitted information includes a court-filed document subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). The submitted information includes a search warrant signed by a magistrate that is subject to section 552.022(a)(17) and must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the department may not withhold the search warrant under section 552.108. As you raise no further exceptions against the disclosure of this information, it must be released. However, we will address your arguments under section 552.108 for the remaining information that is not subject to section 552.022.

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 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 that release of the remaining responsive information will interfere with a pending criminal investigation and prosecution. Based on this representation, we conclude that section 552.108(a)(1) is generally applicable in this instance. *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). We note, however, that the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Thus, the department must withhold the motor vehicle record information you have highlighted in the DIC-24 and DIC-25 forms under section 552.130.

In summary, the department must release the search warrant under section 552.022(a)(17). The department must withhold the highlighted motor vehicle record information under section 552.130. With the exception of the statutory warning, notice of suspension, and the basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) 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.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,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/eb

Ref: ID# 527819

Enc. Submitted documents

c: Requestor  
(w/o enclosures)