



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2014

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2014-13674

Dear Ms. Clarke:

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# 531778.

The Lubbock County Criminal District Attorney's Office (the "district attorney's office") received a request for a copy of the dashboard camera video recording shown to the jury at a specified capital murder trial. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part, as follows:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you do not raise an exception in conjunction with your assertion the requested information is subject to a judicial gag order and order to seal evidence, we note the proper exception to raise in this instance is section 552.107(2). See Gov't Code § 552.107(2). Accordingly, we will consider your argument under that section.

...

(17) information that is also contained in a public court record; and

Gov't Code § 552.022(a)(17). The request indicates the submitted video recordings were shown to the jury, in whole or in part, during the specified trial, thus making such information subject to subsection 552.022(a)(17). You raise sections 552.107(2) and 552.108 of the Government Code for this information. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). You have submitted orders issued by the presiding judge in the 140th District Court of Lubbock, Texas, one of which instituted a gag order upon certain individuals and the other of which sealed the evidence offered in the case. However, with respect to the gag order, we note the order forbids certain statements or interviews by certain individuals, but does not prohibit the release of any information. Further, with respect to the order to seal evidence, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b); *see also Ford v. City of Huntsville*, 242 F. 3d 235, 241-42 (5th Cir. 2001). Consequently, the presiding judge does not have the discretion to prohibit the release of the information at issue once the information at issue falls within a category of information described by section 552.022(a). *Cf. Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813, 817 (Tex. App.—Beaumont 1997, orig. proceeding) (court has no inherent power to ignore express statutory provision that makes information public); *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App.—Beaumont 1997, orig. proceeding) (court may not seal search warrant affidavit that statute expressly provided is public). Because the gag order does not prohibit the release of any information, and because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the district attorney's office may not withhold the information at issue under section 552.107(2). In addition, although you raise sections 552.103 and 552.108 of the Government Code for the information at issue, these sections are discretionary exceptions that protect a governmental body's interests and do not make information confidential under the Act. *See 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); *see also Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver)*. Therefore, to the extent any portions of the video recordings at issue were shown to a jury during a trial, the district attorney's office may not withhold any such portions under section 552.103, 552.107(2), or 552.108 of the Government Code. However, to the extent any portions of the videos were not shown to a jury during a trial, we address your arguments against disclosure of those portions.

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,

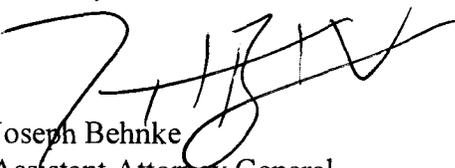
investigation, or prosecution of crime[;]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to active criminal prosecutions and release of the information would interfere with such prosecutions. *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). Based on your representations and our review, to the extent any portions of the video recordings at issue were not shown to a jury during a trial, we conclude the district attorney's office may withhold those portions of the submitted information under section 552.108(a)(1).²

In summary, to the extent any portions of the video recordings at issue were not shown to a jury during a trial, the district attorney's office may withhold those portions of the submitted information under section 552.108(a)(1). To the extent any portions of the video recordings at issue were shown to a jury during a trial, they must be released to the requestor pursuant to section 552.022(a)(17) 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

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

Ref: ID# 531778

Enc. Submitted documents

c: Requestor
(w/o enclosures)