



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2014

Mr. Scott A. Durfee
Assistant General Counsel
Office of the District Attorney
County of Harris
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2014-17768

Dear Mr. Durfee:

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# 538376.

The Harris County District Attorney's Office (the "district attorney's office") received three requests for video and audio recordings pertaining to a specified capital murder trial. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the obligations of the district attorney's office under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the district attorney's office received the first two requests for information on July 16, 2014 and the third request on July 28, 2014. Thus, the district attorney's office was required to submit the documentation required by section 552.301(e) by August 6, 2014, and August 18, 2014, respectively. You indicate the district attorney's office initially timely mailed the documents

specified by section 552.301, but inadvertently sent them to an incorrect address. Section 552.308 of the Government Code provides in pertinent part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period . . . the requirement is met if the document is sent to the person by first class United States mail *properly addressed* with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within that period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

Id. § 552.308(a) (emphasis added). Because the district attorney's office's submission was improperly addressed, it was not received by this office until August 14, 2014; thus, it did not meet the elements of timeliness established by section 552.308 with respect to the first two requests. Therefore, we conclude that the district attorney's office failed to comply with section 552.301 of the Government Code with respect to the first two requests.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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). Although the district attorney's office asserts the information at issue is excepted under section 552.108 of the Government Code, section 552.108 is a discretionary exception and serves only to protect a governmental body's interests, and may be waived. As such, this section does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5, 663 at 5, 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301 with regard to the first two requests, the district attorney's office has waived its claims under section 552.108 for such requests. In addition, by failing to comply with section 552.301 with respect to the first two requests, the district attorney's office has also waived its claims under section 552.108 with respect to the third request. Thus, the district attorney's office may not withhold any of the submitted information under section 552.108 of the Government Code. However, because sections 552.107(2) and 552.130 of the Government Code can

provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information.¹

Next, 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:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). You indicate the submitted video recordings were introduced into evidence during the specified trial, thus making such information subject to subsection 552.022(a)(17). You raise section 552.107(2) 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 state the "351st District Court dictated a court order into the record of the [specified trial] directing the [district attorney's office] not to publicly release any recordings admitted into evidence during trial." However, 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). Therefore, the district attorney's office may not withhold the submitted information under section 552.107(2) of the Government Code. However, we note the video recordings at issue contain information subject to section 552.130, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.130 to the submitted information.

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).*

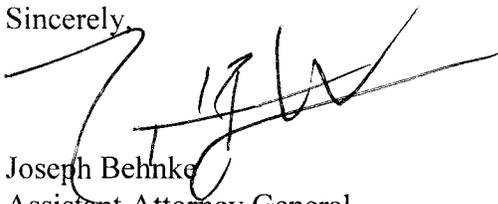
Portions of the video recordings at issue contain discernible license plate numbers that are subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release. *Id.* § 552.130(a). The district attorney's office must withhold the discernible license plate numbers in the submitted video recordings under section 552.130 of the Government Code.

In summary, the district attorney's office must withhold the discernible license plate numbers in the submitted information under section 552.130 of the Government Code. The remaining information must be released.

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

Ref: ID# 538376

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)