



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2005

Mr. Marc J. Schnall
Langley & Banack, Inc.
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2005-05008

Dear Mr. Schnall:

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# 225602.

The Selma Police Department (the "department"), which you represent, received a request for information related to a specific traffic citation and the radar detector used by the citing officer.¹ You claim that 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, some of which consists of representative samples.²

Initially, we note that a document we have marked was created after the request for information was made. The Act does not require a governmental body to disclose

¹ We note that the Act does not require a governmental body to answer questions or perform legal research. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information to any responsive information that is within its custody or control. *See* Open Records Decision No. 561 at 8-9 (1990).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Therefore, the Act does not require the department to release this marked information.

The department raises section 552.108 of the Government Code for a portion of the submitted information. Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested records pertain to a speeding citation issued to the requestor. You also state that on the date of the request, the criminal prosecution related to the citation was pending prosecution. Based upon these representations and our review of the information at issue, we conclude that the release of this marked information 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), *writ refused n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold this marked information under section 552.108(a)(1) of the Government Code. We note, however, that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Lastly, we address the department's claim under section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. In this instance, the only Texas motor vehicle information contained in the remaining submitted information belongs to the requestor. The requestor has a special right of access to information that is protected from public disclosure by laws that are intended to protect his privacy interests. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987). As section 552.130 protects privacy interests, the requestor's own motor vehicle information may not be withheld from him under this exception.³

³ Should the department receive another request for this same information from a person who would not have a right of access to it, the department should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

In summary, the department may withhold the information it has marked pursuant to section 552.108(a)(1) of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Kleine". The signature is written in a cursive style with a loop at the end of the last name.

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 225602

Enc. Submitted documents

c: Mr. Robert Scott Van De Vanter
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(w/o enclosures)