



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2006

Mr. Denis C. McElroy  
Assistant City Attorney  
The City of Forth Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2006-13935

Dear Mr. McElroy:

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# 265540.

The Fort Worth Police Department (the "department") received a request for mobile data terminal information and radio traffic involving a named officer on a specified date and for officers who acted as back up for that officer. You claim that the requested 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 note that you have submitted information which is not responsive to the present request. The request at issue seeks mobile data terminal information and radio traffic from January 13, 2006. Accordingly, any mobile data terminal information or radio traffic that was not created on this date is not responsive to the present request. This ruling does not address the public availability of information that is not responsive to the request, and you need not release such information in response to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You explain that the submitted information pertains to “a pending investigation and planned criminal prosecution by the Tarrant County District Attorney’s Office.” You have provided us with the affidavit of an assistant district attorney who states that release of the requested information at this time would interfere with case number 1008413, regarding the criminal offense of “POSS CONT SUBST U/IG-PG1” that is currently pending prosecution. We have reviewed the submitted information and find, however, that it does not exclusively pertain to the incident in question, involving case number 1008413. Based on your representation, we conclude that the release of the portion of submitted information that pertains to case number 1008413 would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). However, because you have not explained how the remaining submitted information pertains to the ongoing investigation and prosecution, we find that you have not demonstrated the applicability of section 552.108, and the portion of the submitted information that does not pertain to case number 1008413 may be not be withheld on that basis. Therefore, you may withhold only the portions of information relating to case number 1008413 under section 552.108(a)(1) of the Government Code.

We note, however, that the remaining information includes information that may be excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[, ] a motor vehicle title or registration issued by an agency of this state[, or ] a personal identification document[.]” *Id.* § 552.130. Pursuant to section 552.130, the department must withhold the marked Texas motor vehicle record information.

In summary, the department is not required to disclose the submitted non-responsive information. The department may withhold portions of the submitted information which relate to case number 1008413 under section 552.108 of the Government Code. The department must withhold the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code. The remaining 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); *Texas 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 Office of the Attorney General 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. 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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/krl

Ref: ID# 265540

Enc. Submitted documents

c: Mr. Richard C. Kline  
3505 Airport Freeway  
Fort Worth, Texas 76111  
(w/o enclosures)