



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 8, 2008

Ms. Kristy J. Orr  
Ms. Candice M. De La Garza  
Assistant City Attorneys  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2008-09156

Dear Ms. Orr and Ms. De La Garza:

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# 315204.

The Houston Police Department (the "department") received a request for seven categories of information relating to a named police officer, a specified citation, and speed detection equipment. You have submitted information that the department seeks to withhold under sections 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We assume that the department has released any other information that is responsive to this request, to the extent that such information existed when the department received the request. If not, then any such information must be released immediately.<sup>1</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108 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 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*, 551 S.W.2d 706 (Tex. 1977). You state that the speed measurement materials submitted as Exhibit 2 are relating to a pending

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

criminal case involving a speeding offense. You contend that the release of Exhibit 2 would interfere with the case “because [the] information could support or refute the accuracy of the facts obtained and used to charge the suspect in this case.” Based on your representations and our review of the information at issue, we conclude that the department may withhold Exhibit 2 under section 552.108(a)(1). *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).

Section 552.117(a)(2) of the Government Code excepts from disclosure a peace officer’s home address, home telephone number, and social security number, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code.<sup>2</sup> Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the social security number in Exhibit 3 belongs to a Houston police officer. We conclude that the department must withhold the officer’s social security number under section 552.117(a)(2).<sup>3</sup>

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. *See Gov’t Code § 552.130(a)(1)*. We agree that the department must withhold the officer’s Texas driver’s license number in Exhibit 3 under section 552.130.

In summary: (1) the department may withhold Exhibit 2 under section 552.108(a)(1) of the Government Code; (2) the department must withhold the police officer’s social security number under section 552.117(a)(2) of the Government Code; and (3) the officer’s Texas driver’s license number must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.

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

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<sup>2</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions)*.

<sup>3</sup>As we are able to make this determination, we need not address your claim under section 552.1175 of the Government Code.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

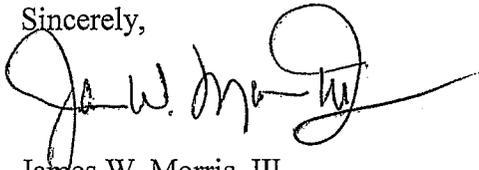
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 315204

Enc: Submitted documents

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c: Mr. Sidney L. Elder  
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(w/o enclosures)