



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2008

Mr. Ron G. MacFarlane, Jr.
Dealey, Zimmerman, Clark, Malouf, & MacFarlane, P.C.
3131 Turtle Creek Boulevard, Suite 1201
Dallas, Texas 75219

OR2008-12194

Dear Mr. MacFarlane:

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# 320735.

The Cedar Hill Police Department (the "department"), which you represent, received a request for the in-car video for a specified police vehicle from a specified date and time. You claim that the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.117(a)(2) of the Government Code, this office has concluded that section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You state that submitted information relates to a criminal investigation being conducted by the Dallas County Sheriff's Office (the "Sheriff's Office"). However, you do not provide a representation from the Sheriff's Office that it wishes to withhold the submitted information or that release of the submitted information will interfere with the criminal investigation. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information. Accordingly, the department may not withhold the submitted information under section 552.108 of the Government Code.

Section 552.117(a)(2) of the Government Code exempts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.² Gov't Code 552.117(a)(2). Pursuant to section 552.117(a)(2), the department must withhold the peace officer's social security number from the submitted information.

Section 552.130 of the Government Code exempts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130(a)(1), (2). We note that section 552.130 does not encompass motor vehicle record information of other states. To the extent the license plate number audible in the submitted information consists of motor vehicle record information issued by an agency of the State of Texas, the department must withhold it under section under section 552.130 of the Government Code.

However, we note that with regards to the information that is subject to sections 552.117(a)(2) and 552.130 of the Government Code you state that "[o]bviously there is no way to redact such information from the recording." If the department lacks the technical capability to redact the information at issue from the in-car video, you must withhold the video in its entirety. *See* Open Records Decision No. 364 (1983).

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

²Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

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 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 320735

Enc. Submitted documents

c: Mr. Croft Casey
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(w/o enclosures)