



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2009

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2009-01293

Dear Mr. Scott:

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# 333746.

The Conroe Police Department (the "department") received two requests from the same requestor for the 9-1-1 audio recording and blood alcohol analysis from a specific incident. You state you have released some of the information to the requestor. You claim 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.

Initially, we address the department's obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). You state the department received the request for the 9-1-1 audio recording on October 31, 2008. However, you did not ask this office for a decision until November 18, 2008. Consequently, with respect to the request for the 9-1-1 audio recording, we find the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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; *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); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure of the 9-1-1 audio recording, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold the submitted 9-1-1 audio recording pursuant to section 552.108 of the Government Code. However, the 9-1-1 audio recording contains Texas motor vehicle information which is subject to section 552.130 of the Government Code. Because section 552.130 can provide a compelling reason to withhold information, we will address the applicability of this exception to the submitted 9-1-1 audio recording. We will also address your argument under section 552.108 in regard to the timely submitted blood alcohol analysis.

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: (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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the blood alcohol analysis relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the blood alcohol analysis 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 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). Accordingly, the blood alcohol analysis may be withheld under section 552.108(a)(1).

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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a)(1)-(2). The department must withhold the Texas license plate numbers contained in the submitted 9-1-1 audio recording under section 552.130.

In summary, the department may withhold the submitted blood alcohol analysis under section 552.108(a)(1) of the Government Code. The department must withhold the license plate numbers in the submitted 9-1-1 audio recording 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read 'CS' followed by a stylized surname.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 333746

Enc. Submitted documents

cc: Requestor
(w/o enclosures)