



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2009-02724

Dear Ms. Armstrong:

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# 336555.(Dallas Open Record Request Nos. 2008-7710).

The Dallas Police Department (the "department") received a request for information pertaining to a specified traffic fatality. You indicate that report number 0322193-V has been released. You claim that portions of the submitted information are 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.¹

Initially, we note, and you acknowledge, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. See Gov't Code § 552.301(b), (e). 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 that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See *id.* § 552.302; *Hancock v. State Bd. of*

¹We 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.

Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision Nos. 586 (1991), 469 (1987). You inform us that the Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will consider whether the department may withhold the submitted information you have marked on behalf of the district attorney under section 552.108. We also will consider the department's claim under section 552.130 as the applicability of this exception can provide a compelling reason for non-disclosure.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, a portion of the submitted information consists of information pertaining to an internal affairs investigation made for or by the department. We note that section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). However, we note and you have informed this office, that the internal affairs investigation at issue, as well as the remaining submitted information is related to an incident that is pending criminal prosecution by the district attorney. You further inform us that the criminal case is currently being considered by the grand jury. You state that the district attorney has asked that the information you have marked be withheld from disclosure as the release of the marked information "will negatively affect [the district attorney's] ability to successfully prosecute this case." Based upon your representations and

our review, we find that section 552.108(a)(1) is applicable to the information you have marked. 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). The department may, therefore, withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code.²

Next, you claim that the Texas license plate information and VIN you have marked in the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Id. § 552.130(a). We agree that the department must withhold the Texas motor vehicle information you have marked in the remaining information under section 552.130.

In summary, the department may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle information you have marked under section 552.130. The remaining information must be released to the requestor.

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

²As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the information you have marked under section 552.108.

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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 cursive script, appearing to read "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eb

Ref: ID# 336555

Enc. Submitted documents

cc: Requestor
(w/o enclosures)