



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 18, 2009

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
Office of General Counsel
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2009-06736

Dear Mr. Kelly:

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# 347805.

The Texas A&M University System (the "university") received a request for information pertaining to a specified accident. You state the university will release basic information. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You also state you will release Exhibit B-1 to the requestor. You claim the remaining information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to a portion of the submitted information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). In this instance, you inform this office that the submitted citation was the subject of a previous open records letter ruling, Open Records Letter No. 2009-05303 (2009). In Open Records Letter No. 2009-05303, we ruled that the submitted citation

must be released. Accordingly, pursuant to section 552.007, the university may not now withhold the previously released citation unless its release is expressly prohibited by law. Although you seek to withhold the submitted citation under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, because the university has released the submitted citation to the public, the university may not now withhold such information under sections 552.103 and 552.108 of the Government Code. However, we note the submitted citation contains Texas motor vehicle record information that is subject to section 552.130 of the Government Code.¹ Because section 552.007 does not apply to information made confidential by law, we will address whether any portion of the submitted citation is excepted from disclosure under section 552.130.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. Thus, section 552.130 is applicable to the Texas motor vehicle record information we have marked in the submitted citation. We note that section 552.130 is intended to protect a person's privacy. Therefore, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Here, the requestor is requesting the information on behalf of an insurer of one of the drivers involved in the accident at issue. However, you state you have no indication that the requestor is the authorized representative of the individual whose Texas motor vehicle record information is at issue in the submitted citation. Nevertheless, if the university receives notification that the requestor is the authorized representative of the individual at issue, the university must release the submitted citation, in its entirety, to the requestor. *See id.* § 552.229 (stating that a written and signed form is required for release of information under section 552.023). Otherwise, if the university does not receive such notification, then the university must withhold the information we have marked in the submitted citation under section 552.130 of the Government Code.

Next, we address your arguments against disclosure of the remaining information. Section 552.108(a) 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,

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a). 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, and provide documentation from the Brazos County District Attorney’s Office stating, the remaining submitted information directly relates to a pending criminal cause of action and the release of this information would interfere with this prosecution. Based on this representation and our review, we conclude section 552.108(a)(1) is applicable to the remaining information. *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 university may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

In summary, if the university receives notification that the requestor is the authorized representative of the individual at issue, the university must release the submitted citation, in its entirety, to the requestor. If the university does not receive such notification, then the university must withhold the information we have marked in the submitted citation under section 552.130 of the Government Code. The university may withhold the remaining information under section 552.108 of the Government Code.

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,



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

ALS/rl

²As our ruling is dispositive, we do not address your remaining argument against disclosure.

Ref: ID# 347805

Enc. Submitted documents

cc: Requestor
(w/o enclosures)