



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2009

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law & Police Section  
City of Dallas  
1400 S. Lamar  
Dallas, Texas 75215

OR2009-07905

Dear Ms. McClellan:

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# 345333 (Dallas Request no. 2009-1302).

The Dallas Police Department (the "department") received a request for information pertaining to a specified individual's arrest for capital murder. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that you failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the procedural requirements of the Act 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* Gov't Code § 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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The need of a governmental body, other than the agency that

is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 (1991). Because you inform us that the Dallas District Attorney's Office (the "district attorney") objects to the release of the requested information, we will consider the district attorney's claim under section 552.108.

Section 552.108(a)(1) 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 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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes a traffic citation which was issued to the murder victim days before the murder at issue took place. You do not explain how this traffic citation relates to the pending charge of murder against the defendant. Thus, you have not established that release of the submitted citation will interfere with the detection, investigation, or prosecution of this crime, and the department may not withhold it under section 552.108(a)(1). You inform us, and the submitted documents reflect, that the remaining information relates to the pending criminal case and the district attorney believes that "release of this information at this time will negatively affect its ability to successfully prosecute this case." Based on these representations, we conclude that the release of the remaining information 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the marked citation and the basic front-page offense and arrest information, the department may withhold the submitted information under section 552.108(a)(1).

The submitted citation contains a Texas license plate number and expiration date. Section 552.130 of the Government Code provides that motor vehicle registration information issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, Texas motor vehicle record information that pertains solely to a deceased individual is not confidential under section 552.130. *See Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*) (Texas does not recognize relational or derivative right of privacy); *see also* Attorney General Opinions

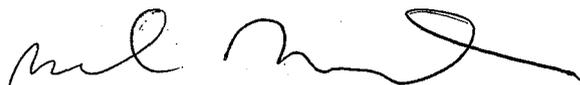
JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Thus, to the extent a living person has an ownership interest in the vehicle to which the license plate number belongs, the department must redact this number and the corresponding expiration date under section 552.130. Conversely, if no living person owns an interest in the vehicle at issue, the department must release the submitted citation in its entirety.

In summary, if a living person has an ownership interest in the vehicle to which the license plate number in the submitted citation belongs, the department must withhold the license plate number and expiration date we marked under section 552.130. With the exception of the remaining information in the citation and basic information, the department may withhold the submitted information under section 552.108(a)(1). If no living person has an ownership interest in the vehicle described in the citation, the citation and basic information must be released. The department may, however, withhold the remaining information under section 552.108(a)(1).

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 345333

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)