



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. Marc J. Schnall
Langley & Banack
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR2009-12265

Dear Mr. Schnall:

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# 358429.

The Selma Police Department (the "department"), which you represent, received a request for photographs, video, and other information relating to a specified case number. You state that there is no responsive video.¹ You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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). You have highlighted the information that the department seeks to withhold under section 552.108.

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You state that the information in question is related to a pending criminal case. Based on your representation, we conclude that the department may withhold the highlighted information under section 552.108(a)(1). *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).

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). This exception protects personal privacy. We agree that the Texas driver's license number you have highlighted must be withheld under section 552.130. We also agree that the requestor has a right of access under section 552.023 of the Government Code to his minor child's Texas driver's license number as the child's authorized representative. Thus, that information may not be withheld from this requestor under section 552.130 and must be released. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).² We note that the requestor also has a right of access to the Texas motor vehicle information we have marked if he owns an interest in the vehicle; otherwise, the department must withhold that information under section 552.130.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We agree that the department may withhold the social security number you have highlighted under section 552.147 and that the requestor has a right to his child's social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary: (1) the department may withhold the highlighted information that is related to the pending case under section 552.108(a)(1) of the Government Code; (2) the department must withhold the Texas driver's license number you have highlighted under section 552.130 of the Government Code, along with the Texas motor vehicle information we have marked unless the requestor owns an interest in the vehicle; and (3) the department may withhold the

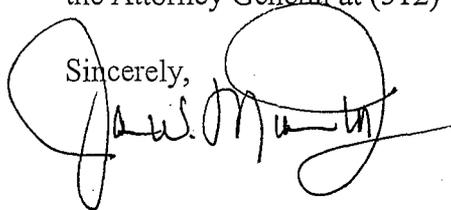
²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

highlighted social security number under section 552.147 of the Government Code. The rest of the submitted information must be released.³

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 358429

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³Should the department receive another request for these same records from a person who would not have a right of access to the private information that must be released to this requestor, the department should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.