



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2009

Mr. Bennett M. Wyse
Messer, Campbell & Brady
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2009-14129

Dear Mr. Wyse:

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# 357599.

The City of Murphy (the "city"), which you represent, received a request for the following records related to the arrest of an individual: police dispatch tape, mobile data terminal printout for the arresting officer during a specified time frame, mobile data video, offense report, arrest report, and copies of the arresting officers' personnel files. You state the city has released a "media report" to the requestor. See Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You state the city does not maintain any information responsive to the request for the police dispatch tape.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.117, 552.119, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. 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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that you have submitted a document containing redactions of a TCLEOSE ID number, birth date, state identification number, and driver's license number. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of this redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting information that it submits to this office in seeking an open records ruling.

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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987).

You claim that the submitted information pertains to a pending criminal prosecution. You have submitted a letter from an assistant district attorney for Collin County (the “district attorney”) stating that a driving while intoxicated (“DWI”) case related to a specified person is pending in Collin County and that release of the submitted information has the potential to compromise this pending prosecution. The mobile data terminal printout, however, does not contain any information related to the DWI case. The district attorney does not explain how release of these records would interfere with the detection, investigation, or prosecution of this crime. Accordingly, the mobile data terminal printout may not be withheld under section 552.108(a)(1). The information you seek to withhold also contains a statutory warning and a notice of suspension. The arresting officer provided copies of these forms to the arrestee. The district attorney has not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of this crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the statutory warning and notice of suspension may not be withheld under section 552.108(a)(1). The remaining information is related to the pending DWI case and has not been previously released. Accordingly, with the exception of the mobile data terminal printout, statutory warning, and notice of suspension, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. *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). As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

The city has not submitted any arguments explaining how release of the mobile data terminal printout, statutory warning, and notice of suspension would interfere with law enforcement. Consequently, you have failed to establish the applicability of section 552.108(b)(1) of the Government Code to this information. Accordingly, the city may not withhold this information under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You have not provided any arguments explaining how the mobile data terminal printout, statutory warning, and notice of suspension are protected under common-law privacy. Accordingly, the city may not withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The submitted statutory warning and notice of suspension contain a Texas driver's license number that is subject to section 552.130. Therefore the city must withhold the driver's license number we have marked under section 552.130.

We note the mobile data terminal printout contains a telephone number. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note that section 552.1175 is also applicable to a peace officer's personal cellular telephone number if the officer personally pays for the service. Cf. Open Records Decision No. 670 at 6 (2001) (analyzing section 552.117, an analogous provision of the Government Code, and extending section 552.117(a)(1) exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024); Open Records Decision No. 506 at 5-6 (1988) (analyzing section 552.117 and determining that it is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Provided that the telephone number at issue is the personal cellular or home telephone number of a peace officer who elects to restrict access to his or her home telephone number in accordance with section 552.1175, the city must withhold the telephone number under section 552.1175 of the Government Code. However, if the telephone number is not the personal cellular or home telephone number of a peace officer who has elected to restrict access to his or her home telephone number, it must be released.

In summary, with the exception of the mobile data terminal printout, statutory warning, and notice of suspension, the city may withhold the submitted information under section 552.108(a)(1). The city must withhold the Texas driver's license number we have marked in the statutory warning and notice of suspension under section 552.130. If the telephone number we have marked in the mobile data terminal printout is the personal cellular or home telephone number of a peace officer who elects to restrict access to his or

her home telephone number in accordance with section 552.1175, it must be withheld under section 552.1175. 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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 357599

Enc. Submitted documents

c: Requestor
(w/o enclosures)