



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 14, 2010

Mr. Thomas R. Gwosdz  
City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902

OR2010-05326

Dear Mr. Gwosdz:

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# 375797.

The Victoria Police Department (the "department") received a request for police report number 2009-00059147. You state the department has released some information to the requestor. You claim the remaining submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You claim the submitted information is excepted under section 552.108(a)(1) of the Government Code. Section 552.108 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). Generally, a

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with the attorney work-product privilege for the submitted Prosecution Charge Report, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Section 552.111 of the Government Code is the proper exception to raise when claiming the work-product privilege in this instance.

governmental body claiming section 552.108(a)(1) 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). We note the submitted information includes a statutory warning and a notice of suspension. These documents, which we have marked, have been provided to the arrestee. You have not provided any arguments explaining how the further release of these documents will interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, the department may not withhold the statutory warning and notice of suspension under section 552.108(a)(1). You state that the remaining information relates to a case that was investigated by the department and that has been presented to the Victoria County District Attorney for prosecution. Based upon your representation and our review, we conclude 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *Gov't Code* § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the submitted information under section 552.108(a)(1).<sup>2</sup>

We next turn to your claim for the statutory warning and notice of suspension under section 552.103 of the Government Code. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

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<sup>2</sup>As our ruling is dispositive for the information subject to section 552.108(a)(1), we do not address your remaining arguments for this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See id.* § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. You inform us the submitted information relates to a criminal case pending prosecution by the Victoria County District Attorney. However, you do not indicate the department would be a party to such litigation, or otherwise demonstrate how the department has a litigation interest in that prosecution. Thus, because you have not explained how the department has a litigation interest in this instance, the statutory warning and notice of suspension may not be withheld on the basis of section 552.103. *See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990).*

We note the statutory warning and the notice of suspension documents contain a Texas driver's license number subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license. Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license number we have marked in the remaining information under section 552.130 of the Government Code.<sup>4</sup>

In summary, with the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the Texas driver's license number we marked in the statutory warning and notice of suspension documents under section 552.130 of the Government Code; the remaining portions of the statutory warning and notice of suspension documents must be released along with the basic information.

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 375797

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)