



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Ms. Ann York
Records Coordinator
Cherokee County
272 Underwood Street
Rusk, Texas 75785

OR2011-01555

Dear Ms. York:

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# 407595.

The Cherokee County Sheriff's Office (the "sheriff") received requests from two requestors for (1) all correspondence pertaining to a specified investigation and (2) the search warrant affidavit and warrant return pertaining to the same investigation. You state some of the requested information has been provided to both requestors. You claim portions of the submitted investigation records are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). Generally, section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information you marked in pages C2 through C4 pertains to a criminal investigation that did not result in a conviction or deferred adjudication, so as to be excepted from disclosure under section 552.108(a)(2). You also state, however, the information in pages C2 through C4 pertains to an open criminal investigation, and, thus, is excepted from disclosure under section 552.108(a)(1). Because you have provided this office with contradictory information, we find you have failed to sufficiently demonstrate the applicability of section 552.108 to the information you seek to withhold in pages C2 through C4. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the sheriff may not withhold the information you marked in pages C2 through C4 under either section 552.108(a)(1) or section 552.108(a)(2) of the Government Code. As you have not claimed any other exceptions to disclosure for this information, it must be released.

You claim the information you marked in pages A2-A7, A8, A9, and B1-B5 is excepted under section 552.108(a)(1) of the Government Code. You state this information pertains to an open criminal investigation. Based on this representation and our review, we conclude the release of this 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the sheriff may withhold the information you marked in pages A2-A7, A8, A9, and B1-B5 under section 552.108(a)(1) of the Government Code.

You seek to withhold the Texas driver's license number you marked in page A1. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by a Texas agency is excepted from public

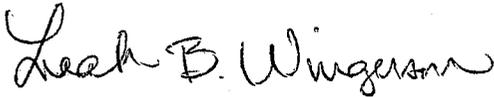
release. Gov't Code § 552.130(a)(1). Thus, the sheriff must withhold the Texas driver's license number you marked in page A1 under section 552.130 of the Government Code.¹

In summary, the sheriff may withhold the information you marked in pages A2-A7, A8, A9, and B1-B5 under section 552.108(a)(1) of the Government Code. The sheriff must withhold the Texas driver's license number you marked in page A1 under section 552.130 of the Government Code. 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 407595

Enc. Submitted documents

c: Requestors
(w/o enclosures)

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.