



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

Mr. Tuan Nguyen
Staff Attorney
City of Houston Police Department
1200 Travis Street
Houston, Texas 77002-6000

OR2011-08917

Dear Mr. Nguyen:

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# 421541 (OR#11-1964).

The Houston Police Department (the "department") received a request for information pertaining to six specified incidents. You state the department is releasing much of the responsive information. 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.

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, subsection 552.108(a)(1) is mutually exclusive of subsection 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 claim the submitted information is excepted under section 552.108 and quote the language of subsections 552.108(a)(1) and 552.108(a)(2). However, you have not provided any arguments explaining how either subsection applies to the submitted information. Because you have raised contradictory subsections and have not explained their applicability to the submitted information, we find you have failed to demonstrate section 552.108 is applicable to the submitted information. *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 department may not withhold the submitted information under either subsection 552.108(a)(1) or subsection 552.108(a)(2) of the Government Code. As you raise no further exceptions to the disclosure of the submitted information, it must be released to the requestor.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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

¹We note that the requestor has a special right of access to his own Texas motor vehicle record information, which is being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office for portions of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)