



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2012

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2012-06768

Dear Ms. Thornton:

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# 453186 (C.A. File No. 12PIA0108).

The Harris County Constable, Precinct 4 (the "constable's office") received a request for all EZ tag identification numbers and the employees to whom they are assigned. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information that was provided to the requestor by the Harris County Toll Road Authority and is not maintained by the constable's office. We note this information is not responsive to the present request for information. This ruling does not address the public availability of information that is not responsive to the request, and the constable's office is not required to release non-responsive information.

Section 552.152 of the Government Code provides:

¹Although you claim section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 as section 552.152 of the Government Code. See Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state, and provide documentation showing, that a portion of the submitted information pertains to undercover officers and the vehicles used in undercover operations, and release of this information would subject those officers to a substantial threat of physical harm. Based on your representations and our review, we conclude the constable's office must withhold the information we have marked under section 552.152 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."² *Id.* § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Accordingly, the constable's office must withhold the EZ tag identification numbers we have marked under section 552.136 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(2). Accordingly, the constable's office must withhold the license plate numbers we have marked under section 552.130 of the Government Code.³

Section 552.108 of the Government Code provides, in 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[.]

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies permitting them to withhold certain information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting a decision from this office.

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Id. § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Subsection 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming an exception 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). Upon review, we find you have failed to demonstrate the release of the remaining information would interfere with a particular pending investigation. Accordingly, the constable's office may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code. Upon further review of your arguments, we find you have failed to demonstrate the release of the remaining information would interfere with law enforcement or prosecution efforts in general. Accordingly, the constable's office may not withhold the remaining information under section 552.108(b)(1) of the Government Code.

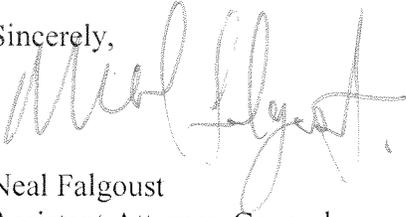
In summary, the constable's office need not release information that is not responsive to the request. The constable's office must withhold the information we have marked under section 552.152, section 552.136, and section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in cursive script, appearing to read "Neal Falgoust".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 453186

Enc. Submitted documents

c: Requestor
(w/o enclosures)