



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 28, 2013

Mr. James A. McKechnie  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2013-01566

Dear Mr. McKechnie:

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# 477157 (City ID# 535).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified citation, including (1) all notes, records, and log files made by a named officer pertaining to the citation, (2) the make, model, and serial number, the calibration, testing, and certification records, and the operator's manuals of any speed detection equipment used in issuance of citation, (3) the department's regulations and guidelines for use of speed detection equipment, and (4) formal notice and a copy of the complaint for the specified citation. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to categories one and four of the request for information. To the extent any information responsive to these portions of the request existed on the date the department received the request, we assume the department has released it.<sup>1</sup> If the department has not released any such information, it

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986).

must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108(a)(1) of the Government Code 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). You state, and provide a statement from the municipal court prosecutor reflecting, the information at issue relates to a pending case and release of the submitted information would interfere with the prosecution of that case. *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). Based on your representations and our review, we agree section 552.108(a)(1) of the Government Code is applicable to the submitted information. Accordingly, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

**Ref: ID# 477157**

**Enc. Submitted documents**

**c: Requestor  
(w/o enclosures)**