



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2013-14622

Dear Ms. Brooks:

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# 497010 (City ID#'s 12441, 12461, 12489, and 12510).

The City of Midland and the Midland Police Department (collectively, the "city") received four requests for information regarding a specified incident. You state you have released some information to the requestors, including the peace officer's crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c)(4) (providing for release of accident report if requestor provides two of following three pieces of information: (1) date of accident, (2) name of any person involved in accident, and (3) specific location of accident). You claim 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.

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, that are subject to subsection 552.022(a)(17). The marked court-filed documents must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the marked court-filed documents may not be withheld under section 552.108 of the Government Code. However, because section 552.130 makes information confidential under the Act, we will also consider the applicability of section 552.130 to the marked court-filed documents.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130(a)(2).* The court-filed documents subject to section 552.022 contain vehicle identification numbers subject to section 552.130. Accordingly, the city must generally withhold the information we have marked under section 552.130 of the Government Code. However, we note section 552.130 protects personal privacy. Further, we note two of the requestors, to whom the city has assigned identification numbers 12461 and 12489, are the authorized representatives of one of the individuals whose information is at issue. Accordingly, those requestors have a right of access to that individual's motor vehicle record information, and the city may not withhold it from them under section 552.130 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); *Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).*

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 the submitted information relates to a pending criminal investigation and prosecution. Based on 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.

¹The Office of the Attorney General will raise a mandatory exception to disclosure, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

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). Thus, section 552.108(a)(1) is applicable to the information not subject to section 552.022.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state you have released, the city may withhold the information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.

In summary, the city must release the marked court-filed documents subject to section 552.022(a)(17) of the Government Code. In releasing the court-filed documents, the city must generally withhold the information we have marked under section 552.130 of the Government Code. However, the city must release the motor vehicle record information of the individual for whom requestor numbers 12461 and 12489 are acting as authorized representatives. With the exception of basic information, which you state you have released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/dls

Ref: ID# 497010

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)