



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2013

Ms. Judy Hickman  
Assistant Supervisor  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2013-19820

Dear Ms. Hickman:

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# 505839.

The Beaumont Police Department (the "department") received a request for information pertaining to incident report number 2013-012345. You state the department has released some of the requested information. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open

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<sup>1</sup>Although you do not raise section 552.137 of the Government Code in your brief, we understand you to raise this exception based on your markings.

records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The submitted documentation reveals the department received a prior request for incident report number 2013-012345 from the same requestor dated May 30, 2013. We note to the extent any of the submitted incident report existed on the date the department received the prior request for information, such information was responsive to that prior request. A review of our records reveals the department did not seek a ruling from our office with regard to any information responsive to the May 30, 2013, request for information. Accordingly, we find the department failed to comply with the procedural requirements of section 552.301 with regard to any information responsive to the request of May 30, 2013.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). You claim section 552.108 of the Government Code for the submitted information. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, to the extent any portion of incident report number 2013-012345 existed on the date the department received the first request for such information, the department has waived its claim under section 552.108 with respect to such information. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption.<sup>2</sup> Therefore, we will address the applicability of these exceptions to the submitted information that was responsive to the prior request for information. We will also address the department's argument under section 552.108 of the Government Code, as well as the submitted arguments under section 552.101, for the submitted information that was not responsive to the prior request.

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

You contend the information that was not responsive to the prior request is subject to section 552.108 of the Government Code, which provides, in relevant part, the following:

(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:

(2) it is information that the 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)(2). A governmental body claiming subsection 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the submitted information relates to a case that “*has not resulted* in a conviction or deferred adjudication” (emphasis added). You also state the information relates to “an investigation that *did not result* in conviction or deferred adjudication” (emphasis added). Further, you inform us the “statute of limitations is not up on this case and there could still be prosecution for this assault and family violence offense.” We note subsection 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case that did not result in conviction or deferred adjudication. *Id.* § 552.108(a)(2). Thus, having considered your conflicting representations, we find you have failed to demonstrate the applicability of subsection 552.108(a)(2) to the information at issue. Accordingly, the department may not withhold any portion of the information under subsection 552,108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). We note section 58.007(c) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. You argue portions of the submitted information are subject to section 58.007(c) of the Family Code. Upon review, we find the submitted information, which involves a forty-eight-year-old suspect, does not list a juvenile as a suspect, offender, or defendant. Thus, you have not demonstrated how the submitted information involves juvenile conduct for purposes of section 58.007 of the Family Code. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

Next, you argue portions of the submitted information are confidential under section 552.101 of the Government Code in conjunction with section 201.806 of the Transportation Code, which provides,

(a) The [Texas Department of Transportation] shall:

(1) tabulate and analyze the vehicle accident reports it receives; and

(2) annually or more frequently publish statistical information derived from the accident reports as to the number, cause, and location of highway accidents, including information regarding the number of:

(A) accidents involving injury to, death of, or property damage to a bicyclist or pedestrian; and

(B) fatalities caused by a bridge collapse, as defined by Section 550.081 .

(b) The [Texas Department of Transportation] shall provide electronic access to the system containing the accident reports so that the Department of Public Safety can perform its duties, including the duty to make timely entries on driver records.

Transp. Code § 201.806. Section 201.806 does not make information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 478 (1987)* (as general rule, statutory confidentiality requires express language making information confidential). Thus, the department may not withhold any portion of the

submitted information under section 552.101 in conjunction with section 201.806 of the Transportation Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>3</sup>

You have marked an e-mail address that you seek to withhold under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). In this instance, the e-mail address you have marked belongs to the requestor's client. Thus, the requestor has a right to her client's e-mail address under section 552.137(b). *Id.* § 552.137(b). Therefore, the department may not withhold the marked e-mail address under section 552.137 of the Government Code.

In summary, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and must release the remaining information to this requestor.<sup>4</sup>

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<sup>3</sup>We note section 552.130 of the Government Code allows a governmental body to redact the information described in subsection 552.130(a)(2) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). However, if a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>4</sup>We note the information being released in this instance includes information that may be confidential with respect to the general public. *See* Gov't Code §§ 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles), .137(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 505839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)