



February 4, 2015

Lieutenant Russell Brown
Records Manager
Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401-4425

OR2015-02237

Dear Lieutenant Brown:

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# 550815 (PIR OR 14-14).

The Bellaire Police Department (the "department") received a request for a specified dash-camera video. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.¹ We have also received and considered

¹The requestor alleges the department failed to comply with section 552.301 of the Government Code. 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 the requested information is public and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 319(1982), 177(1977). A compelling reason exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The need of a governmental body, other than the one that failed to comply with the procedural requirements of section 552.301, to withhold information under sections 552.103 and 552.108 can provide compelling reasons under section 552.302. Open Records Decision No. 586 (1991), 469 (1987). Regardless of whether the department failed to comply with section 552.301, you state the Harris County District Attorney's Office (the "district attorney's office") and the Houston Police Department assert the information at issue should be withheld under sections 552.103 and 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office and the Houston Police Department under sections 552.103 and 552.108.

comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

The requestor asserts the submitted video recording was shown in court during the trial of a named individual. 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). Thus, to the extent any portion of the submitted video recording was shown in court, that portion of the submitted video recording is subject to section 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* Although the district attorney's office and the Houston Police Department seek to withhold the information at issue under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, to the extent any portion of the submitted video recording was shown in court, the department may not withhold that portion under section 552.103 or section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to that portion of the submitted video recording shown in court and subject to section 552.022(a)(17).² However, to the extent any portion of the submitted video recording was not shown in court, we consider your arguments against disclosure.

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. Accordingly, to the extent any portion of the submitted information was shown in court, the department must withhold the

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

audible and discernible license plate information from that portion of the submitted video recording under section 552.130 of the Government Code.

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 is related to a capital murder case currently being appealed. Further, you state the district attorney’s office and the Houston Police Department object to release of the submitted information because it relates to a pending criminal prosecution. Based upon these representations, we conclude release of the submitted 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude section 552.108(a)(1) of the Government Code is applicable to the submitted information. Thus, with the exception of those portions of the submitted information shown in court, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office and the Houston Police Department.³

In summary, to the extent any portion of the submitted information was shown in court, the department must withhold the audible and discernible license plate information from that portion of the submitted video recording under section 552.130 of the Government Code and release the remaining information. To the extent any portion of the submitted information was not shown in court, the department may withhold that portion of the submitted video recording under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office and the Houston Police Department.

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

³As our ruling is dispositive, we need not address the remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to be 'DO', with a long horizontal line extending to the right.

Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 550815

Enc. Submitted documents

c: Requestor
(w/o enclosures)