



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2015

Ms. Julie P. Doshier
Counsel for City of Farmers Branch
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-07333

Dear Ms. Doshier:

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# 560015 (Ref. No. 70110).

The Farmers Branch Police Department (the "department"), which you represent, received a request for eight categories of information pertaining to civilian passengers, certain communications, a specified address, and crime statistic data regarding motor vehicle burglaries.¹ You state the department has provided some of the requested information to the requestor. You indicate the department does not have any information responsive to parts of the request.² You claim some of the submitted information is excepted from disclosure

¹You state the department received clarification of part of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you have marked and labeled some of the submitted information as not responsive to the instant request because the requestor specifically exclude such information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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). You state the information you have marked as section 552.108(a)(1) pertains to a potential witness in a pending prosecution. Based on your representations, we conclude release of the information at issue 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) (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, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.108 of the Government Code also provides, in relevant 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:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. You state the information you have marked as section 552.108(a)(2) and as section 552.108(b)(2) pertains to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude sections 552.108(a)(2) and 552.108(b)(2) are applicable to the information at issue. Accordingly, the department may withhold the information you have marked under sections 552.108(a)(2) and 552.108(b)(2) of the Government Code.

You state you will redact the motor vehicle record information you have marked under section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We note the remaining information contains additional information that is subject to section 552.130. Therefore, the department must withhold the information you have marked, and the additional motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department may withhold the information you have marked under sections 552.108(a)(1), 552.108(a)(2), and 552.108(b)(2) of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.⁴

³You state the department will redact the information subject to section 552.130 pursuant to the previous determination issued in Open Records Decision No. 684 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code, without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). 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). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130(c), not Open Records Decision No. 684.

⁴We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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,

A handwritten signature in black ink that reads "Leah B. Wingerson". The signature is written in a cursive style with a large initial "L".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 560015

Enc. Submitted documents

c: Requestor
(w/o enclosures)