



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2016

Ms. Jackie Fisher-Davis
Records Clerk
Harker Heights Police Department
402 Indian Trail
Harker Heights, Texas 76548

OR2016-05047

Dear Ms. Fisher-Davis:

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# 600499.

The City of Harker Heights (the "city") received a request for information pertaining to a specified incident involving the requestor. You state you have released some information. 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.

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[.]

Gov't Code § 552.108(a)(2), (b)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body claiming 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a case that concluded with a plea of no contest and fines paid. However, upon review, we find the city has failed to demonstrate the submitted information relates to a criminal case that concluded in a final result other than conviction or deferred adjudication. *See* Crim. Pro. Code art. 27.02(5) (plea of *nolo contendere* is equivalent of plea of guilty for purposes of criminal prosecution); *Ex parte Williams*, 703 S.W.2d 674, 678 (Tex. Crim. App. 1986) (plea of *nolo contendere* admits every element of the offense and is legally sufficient in itself to support a misdemeanor conviction). Thus, section 552.108(a)(2) of the Government Code is not applicable to the submitted information and may not be withheld on this basis. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

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.¹ *See* Gov't Code § 552.130(a). The requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Upon review, we find the city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The city must release the remaining information.²


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.

¹The 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).

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

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, appearing to read 'Meredith L. Coffman', followed by a long horizontal flourish.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/akg

Ref: ID# 600499

Enc. Submitted documents

c: Requestor
(w/o enclosures)