



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Mr. C. David Richards
Associate General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

OR2020-12620

Dear Mr. Richards:

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# 828601 (TxDMV ID# 20-1035).

The Texas Department of Motor Vehicles (the "department") received a request for a specified E-tag report and for information pertaining to three specified buyer tags. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We understand the department notified the Texas Department of Public Safety ("DPS") of the request and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We note the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-32295 (2019). As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

determination and withhold the submitted information in accordance with Open Records Letter Nos. 2019-32295. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled on, we will address your submitted argument.

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: (1) 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(a)(1) must 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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and a representation from the law enforcement agency that it wishes to have the information withheld. DPS states the information at issue relates to an ongoing criminal investigation. Based upon this representation, we conclude the 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, section 552.108(a)(1) is applicable to the submitted information. The department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of DPS.²

In summary, to the extent the submitted information is identical to the information previously submitted and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2019-32295 as a previous determination and withhold the submitted information in accordance with that ruling. The department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of DPS.

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.

² As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the requested video recordings. *See generally* Occ. Code § 1701.661(a), (e). We also note as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/mo

Ref: ID# 828601

Enc. Submitted documents

c: Requestor
(w/o enclosures)