ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2006

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-03329

Dear Mr. Barrow:

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# 249363.

The City of Fort Worth (the "city") received a request for information relating to a specific incident involving two named individuals. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You also state that the rest of the requested information is the subject of Open Records Letter No. 2006-2816 (2006). You do not indicate that there has been any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude that the city must dispose of the requested information that is the subject of Open Records Letter No. 2006-2816 in accordance with that ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We note that the submitted documents include accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Texas Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute.

Id. In this instance, the requestor has provided the city with two of the three specified items of information. Therefore, the city must release the accident reports that we have marked under section 550.065(c)(4) of the Transportation Code.

The submitted documents also include an affidavit for a search warrant. A search warrant affidavit is made public by statute if the search warrant has been executed. *See* Crim. Proc. Code art. 18.01(b). Because it relates to a search warrant that has been executed, the search warrant affidavit that we have marked must be released under article 18.01 of the Code of Criminal Procedure.

We also note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the information that is subject to section 552.022 under section 552.108 of the Government Code, this section 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), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the information that is subject to section 552.022 under section 552.108. As none of the information in question is expressly confidential under other law, the marked information that is subject to section 552.022(a)(17) of the Government Code must also be released.

Next, we address your claim under section 552.108 of the Government Code. Section 552.108 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided affidavits stating, that the rest of the submitted information relates to a pending criminal investigation and prospective prosecution. Based on your representations and the submitted affidavits, we find that section 552.108(a)(1) is applicable in this instance. *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).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information, including a detailed description of the offense, even if this information

does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code.

Lastly, we note that under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[1] The city must withhold the arrested person's social security number under section 552.147.

In summary: (1) the city must dispose of the requested information that is the subject of Open Records Letter No. 2006-2816 in accordance with that ruling; (2) the marked accident reports must be released under section 550.065(c)(4) of the Transportation Code; (3) the marked search warrant affidavit must be released under article 18.01 of the Code of Criminal Procedure; (4) the city must also release the marked information that is subject to section 552.022(a)(17) of the Government Code; (5) except for the basic information that must be released under section 552.108(c), the city may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code; and (6) the arrested person's social security number must be withheld under section 552.147.[2]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

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[1]We note that 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.

[2]As we are able to make these determinations, we do not address your claims under sections 552.101 and 552.130 of the Government Code.

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 249363

Enc: Submitted documents

c: Mr. Jason Arnold
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(w/o enclosures)