



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2009

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-07160

Dear Ms. Chang:

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# 344276.

The Houston Police Department (the "department") received a request for all investigation information regarding the death of a named individual. You state the department will provide basic information to the requestor. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted incident reports and related documents are excepted from disclosure under sections 552.101, 552.108, 552.130, 552.137 and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains court orders for the production of telephone records. Court-filed documents are expressly public under section 552.022(a)(17)

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<sup>1</sup>Although you did not timely raise section 552.137 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will consider your argument under this exception. *See* Gov't Code §§ 552.301, .302. Additionally, although you also raise section 552.136 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert this exception. *See id.*

of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you have claimed no other exceptions to disclosure for these documents, they must be released.

You assert the remaining submitted information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 remaining incident reports and related documents pertain to a pending criminal investigation. Based on your representations and our review, we determine release of the remaining 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, the department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.<sup>2</sup> We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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.

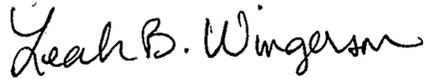
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 344276

Enc. Submitted documents

c: Requestor  
(w/o enclosures)