



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2009

Ms. Denika Caruthers
Assistant District Attorney
Dallas County, Texas
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2009-07975

Dear Ms. Denika Caruthers:

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# 345587.

The Dallas County Constable's Office, Precinct 3 (the "constable") received a request for twelve items of information regarding the constable's Special Response Team. You state that the constable will release most of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹ We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note that portions of the information in Exhibits C, D, and E, which we have marked, are not responsive to the request. In comments submitted to our office, the requestor states that he is not seeking any information about confidential informants. The constable need not release information that is not responsive to this request, and this ruling will not address that information.² *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. – San Antonio 1978, writ dism'd).

¹We assume that the "representative sample" in Exhibits E and F 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.

²As our ruling is dispositive for the information concerning confidential informants in Exhibits C and D, we do not address your other arguments against disclosure of this information.

Next, we note the constable has not submitted any donation records in response to item seven of the request. To the extent information responsive to item seven of the request exists, we assume that you have released it to the requestor. If not, the constable must do so at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We note that the submitted information in Exhibit D consists of a court-filed document that is subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. *See* Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you seek to withhold the court order under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 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(a)(17). As you raise no other exception to disclosure for this information, the court order in Exhibit D must be released. However, we will consider your arguments under sections 552.101 and 552.108 for the remaining submitted information not subject to section 552.022(a)(17).

You contend that portions of Exhibits E and F are excepted by section 552.108(a)(1) of the Government Code. 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). Generally, 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* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that some of the cases listed in Exhibits E and F pertain to pending criminal prosecutions. Based upon this representation, we conclude that section 552.108(a)(1) is applicable to the information you have marked in Exhibits E and F. *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).

However, 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*. *See* 531 S.W.2d at 186-88. The constable must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of

information deemed public by *Houston Chronicle*). Thus, with the exception of basic front page information, the constable may withhold the information you have marked in Exhibits E and F pursuant to section 552.108(a)(1).

Section 552.108(b)(1) of the Government Code provides:

(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:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) protects information the public disclosure of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police departments, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that the remaining information is excepted by section 552.108(b)(1). You state that release of the information in Exhibit B would “permit private citizens to know what kinds of equipment, weapons, and ammunition the deputies carry and permit them to anticipate weaknesses in the in the Response Team.” Based on your representations and our review, we conclude that the constable has demonstrated that the release of the information in Exhibits B would interfere with law enforcement and crime prevention. Thus, the constable may withhold this information under section 552.108(b)(1). However, we conclude that the constable has failed to demonstrate how the release of any of the remaining information in Exhibits E and F would interfere with law enforcement for the purposes of section 552.108(b)(1). Accordingly, this information may not be withheld on the basis of section 552.108(b)(1).

We note that the remaining information in Exhibit E contains Texas motor vehicle record information subject to section 552.130 of the Government Code.³ This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code

³The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.130(a)(1), (2). Thus, the constable must withhold the information we have marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130.

In summary, with the exception of basic information, the constable may withhold the information you have marked in Exhibits E and F under section 552.108(a)(1) of the Government Code. The constable may withhold Exhibit B under section 552.108(b)(1) of the Government Code. The constable must withhold the Texas motor vehicle record information we have marked in Exhibit E under section 552.130 of the Government Code. The remaining information must be released.

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, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 345587

Enc. Submitted documents

c: Requestor
(w/o enclosures)