



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 17, 2009

Mr. Christopher D. Taylor  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702

OR2009-08387

Dear Mr. Taylor:

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# 346159 (City of Waco reference no. LGL-09-328).

The Waco Police Department (the "department") received a request for information pertaining to offense report number 08-027879. You state you released four pages and one compact disc to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples of this information. *See Gov't Code § 552.301(e)(1)(D)*. In this instance, your brief to this office states that the information responsive to this request includes City of Waco computer aided dispatch ("CAD") records, the marked parts of which you assert are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.318 of the Health & Safety Code. However, you did not submit any CAD records. Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd.*

*of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Although section 552.101 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that any portion of the CAD records are confidential because you failed to submit these records for our review. Therefore, we have no choice but to order you to release the CAD records in their entirety. If you believe any portion of the responsive CAD records are confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

You assert the submitted offense report is excepted from 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 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 provide a department memorandum stating that the submitted report relates to an active criminal case. Based on this representation, we conclude that the release of the submitted offense report 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).<sup>1</sup>

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 information held to be public in *Houston Chronicle* and includes the arrestee's social security number. *See* 531 S.W.2d at 186-88. Section 552.147(b) of the Government Code generally 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. However, the requestor has a right of access to his own social security number and it must be released to him. *See* Gov't Code § 552.023(b). In summary, the CAD records must be released. With the exception of basic information, including the arrestee's social security number, the department may withhold the submitted offense report pursuant to section 552.108(a)(1) of the Government Code.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining 552.130 argument against disclosure.

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, 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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 346159

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)