



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2009

Mr. Robert Massey  
Assistant City Attorney II  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-09029

Dear Mr. Massey:

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# 347641.

The City of Wichita Falls (the "city") received a request for two specified reports. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes magistrate warnings that have been signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. *See* Gov't Code § 552.022(a)(17); *see also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" that make court records confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions generally). Thus, the magistrate warnings we have marked may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions against the disclosure of this information, it must be released. We will consider your arguments under section 552.108(a)(2) for the remaining information not subject to section 552.022.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert the submitted reports pertain to investigations that did not result in convictions or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the remaining information.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You indicate that the city seeks to withhold the identity of confidential informants in the submitted incident reports. We note that basic information does not include the identification and description of witnesses; therefore, the city need not release any informant’s identity in this instance as part of basic information. *See Houston Chronicle*, 531 S.W.2d at 187; ORD 127 at 3-4. Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>1</sup>

In summary, the city must release the magistrate warnings we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) 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.

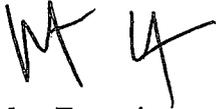
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'M 4'.

Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 347641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)