



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2009

Mr. Robert L. Collins
Attorney
P.O. Box 7726
Houston, Texas 77270-7726

OR2009-09626

Dear Mr. Collins:

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# 353445.

The Port Isabel Police Department (the "department"), which you represent, received a request for eight categories of information related to a specified incident. You claim that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under the Act unless they are expressly confidential under other law. Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Upon review, we determine that the submitted information does not comprise a completed investigation. Thus, section 552.022 is inapplicable. We will therefore address the department's claimed exception.

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* Gov’t Code §§552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the information you seek to withhold relates to a pending criminal case. Based on your representation, we conclude that the release of this 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable.

We note, however, that 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*. *See* 531 S.W.2d at 186-7; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic front page information, which you acknowledge must be released, the department may withhold the information at issue pursuant to section 552.108(a)(1).

The requestor asserts that section 552.023 of the Government Code applies in the present situation. Under section 552.023, a person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person’s privacy interests. Gov’t Code § 552.023(a). However, section 552.023 does not apply where interests other than the person’s privacy are being protected. *See* Open Records Decision No. 565 (1990) (provisions of Medical Practices Act making medical records confidential are intended to protect more than just the privacy interests of the patient). In this instance, the information at issue may be withheld under section 552.108, which protects law enforcement interests rather than privacy rights. Therefore, section 552.023 does not apply, and the requestor does not have a special right of access to the submitted information.

In summary, with the exception of basic front page information, which you acknowledge must be released, the department may withhold the information at issue pursuant to section 552.108(a)(1).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 353445

Enc. Submitted documents

c: Requestor
(w/o enclosures)