



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2009

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
William B. Travis Building  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2009-13414

Dear Ms. Rangel:

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# 356190.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for surveillance videos, 911 dispatch calls, incident reports, and a mug shot relating to a series of armed robberies that occurred on June 20, 2009 at several specified locations. You indicate the sheriff does not maintain some of the requested surveillance videos. We note the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd). You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office 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.

Initially, we note the sheriff appears to have released the submitted surveillance videos and mug shot that you now seek to withhold from the public. Section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See* Gov't Code § 552.007(b). As a general rule, information that a governmental body has released to a member of the public, may not subsequently be withheld from another member of the public, unless disclosure of the information is expressly prohibited by law. *See id.* § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. *See* ORD177. Therefore, to the extent the sheriff previously released the submitted surveillance videos and mug shot to a member or members of the public, the sheriff may not now withhold any such information under section 552.108 of the Government Code. To the extent the sheriff has not released the submitted surveillance videos and mug shot, we will address your argument against disclosure of this as well as the remaining submitted information under section 552.108.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and provide documentation showing, that the information at issue is related to pending criminal cases. Based on your representation and our review, we conclude that section 552.108(a)(1) is generally applicable to the information at issue. *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).

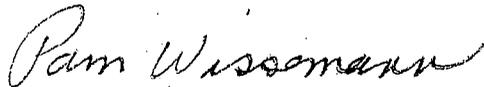
As you acknowledge, however, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Section 552.108 (c) refers to the basic front-page information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information

deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been released, the sheriff may withhold the submitted information that has not been previously released to the public under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we do not address your other arguments 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/jb

Ref: ID# 356190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)