



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2009

Mr. B. Chase Griffith
City Attorney for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2009-13419

Dear Mr. Griffith:

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# 356256.

The McKinney Police Department (the "department"), which you represent, received a request for five categories of information pertaining to a named individual and information on how many felony warrants were served by two named officers during the night shift. You claim that 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 (interested party may submit written comments regarding availability of requested information).

Initially, we note that you have not submitted any information in response to the request for how many felony warrants were served by two named officers during the night shift. To the extent any documents responsive to this portion of the request existed on the date the department received the request, we assume you have released them. If you have not released any such information to the requestor, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted documents include information that has been filed with a court. Section 552.022(a)(17) of the Government Code 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. Gov't Code § 552.022(a)(17). Although you seek to withhold the court-filed information, which we have marked, 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 Gov't Code § 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). Therefore, the department may not withhold the court-filed information under section 552.108 of the Government Code. We note that the court-filed information contains information subject to section 552.130 of the Government Code.¹ As section 552.130 constitutes "other law" for the purposes of section 552.022, we will consider this exception for the information subject to 552.022. We will also consider your claims under section 552.108 for the information that is not subject to section 552.022.

You claim that the information pertaining to report numbers 09-030157, 09-017054, and 09-011383 is excepted under section 552.108(a)(1) 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)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 state in your brief that report numbers 09-030157, 09-017054, and 09-011383 relate to pending criminal investigations and prosecutions. However, the requestor states and provides documentation supporting that the arrestee in report numbers 09-017054 and 09-011383 pled guilty prior to the instant request for information. You have also informed our office that report numbers 09-017054 and 09-011383 are no longer pending. Accordingly, we find that report numbers 09-017054 and 09-011383 do not pertain to pending criminal investigations or prosecutions, and they may not be withheld based on section 552.108(a)(1). However, based upon your representation and our review, we conclude that the release of report number 09-030157 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) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the information pertaining to report number 09-030157.

Next, you claim that the information pertaining to report number 09-011586 is excepted under section 552.108(a)(2), which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code*

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

§ 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that report number 09-011586 pertains to a criminal investigation by the department that has been concluded and that did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the information pertaining to report number 09-011586.

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). Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold the information pertaining to report number 09-030157 under section 552.108(a)(1) of the Government Code and the information pertaining to report number 09-011586 under section 552.108(a)(2) of the Government Code.²

We note that the information pertaining to report numbers 09-017054 and 09-011383 contain information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). Upon review of the remaining information, we have marked Texas motor vehicle record information that the department must generally withhold under section 552.130 of the Government Code. Additionally, the submitted audio recordings pertaining to report number 09-017054 contain Texas license plate numbers that must generally be withheld under section 552.130. We note that section 552.130 protects personal privacy. The requestor appears to be either an individual to whom a portion of the Texas motor vehicle record information pertains or his father. Thus, the requestor may have a right of access to some of Texas motor vehicle record information under section 552.023 if he is the individual to whom that information pertains or the individual's authorized representative. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is

²We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code 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, if the requestor is the arrestee or the arrestee's authorized representative, he has a right of access to the arrestee's social security number and it must be released to him. *See generally id.* § 552.023(b).

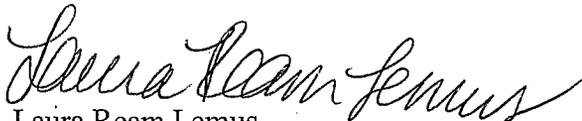
considered confidential by privacy principles). Accordingly, if the marked Texas motor vehicle record information pertains to the requestor or if the requestor is the authorized representative of that individual, the department may not withhold that individual's Texas motor vehicle record information from the requestor under section 552.130. If the requestor does not have a right of access to the Texas motor vehicle record information in report numbers 09-017054 and 09-011383, then it must be withheld under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold report number 09-030157 under section 552.108(a)(1) of the Government Code and report number 09-011586 under section 552.108(a)(2) of the Government Code. To the extent the requestor does not have a right of access to it, the department must withhold the Texas motor vehicle record information in report numbers 09-017054 and 09-011383 under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

³We note that the requestor may have a special right of access to Texas motor vehicle record information in this instance. Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 356256

Enc. Submitted documents

c: Requestor
(w/o enclosures)