



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2009

Mr. Arthur Provenghi
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-14683

Dear Mr. Provenghi:

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# 358574.

The El Paso County Sheriff's Office (the "sheriff") received a request for all documents pertaining to a specified incident. You indicate that the sheriff will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Attachment B contains court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, the court-filed documents must be released to the requestor, unless they are confidential under other law. Although you assert this information is excepted under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions within the Act and not "other law" that makes information confidential. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *Open Records Decision Nos. 177 (1977)* (governmental body may waive statutory predecessor to

section 552.108); 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the court-filed documents, which we have marked, may not be withheld under either section 552.103 and 552.108. As you make no further arguments against the disclosure of these documents, they must be released to the requestor.

We will now address your arguments regarding the information not subject to section 552.022. Section 552.108(a)(1) 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 . . . 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the District Attorney for the Thirty-Fourth Judicial District showing, that the remaining information in Attachments B, C, and D relates to a pending prosecution. Based on your representation and our review, we conclude that release of these attachments 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. 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).

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 a detailed description of the offense. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, which you indicate you will release, and the information we have marked under section 552.022(a)(17), the sheriff may withhold the information in Attachments B, C, and D under section 552.108(a)(1) of the Government Code.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. You claim that the remaining information is confidential under chapter 730 of the Transportation Code. We understand you to raise section 730.004, which provides that:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730:

(1) "Agency" includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) "Motor vehicle record" means a record that pertains to a motor vehicle operator's or driver's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

(A) a record that pertains to a motor carrier; or

(B) an accident report prepared under Chapter 550 or 601.

Id. § 730.003(1), (4). Section 730.004 applies only to an "agency" that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established that the sheriff compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the sheriff. Accordingly, the sheriff may not withhold any part of the remaining information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

Section 552.130 of the Government Code excepts from 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[.]" Gov't Code § 552.130. We note section 552.130 does not apply to out-of-state motor vehicle record information. Upon review, we find that the remaining information does not relate to a motor vehicle driver's license or registration issued by an agency of this state. Therefore, the sheriff may not withhold any of the remaining information under section 552.130.

In summary, (1) the sheriff must release the information we have marked in Attachment B pursuant to section 552.022(a)(17) of the Government Code; (2) the sheriff may withhold the remaining information in Attachment B, as well as the information in Attachments C and D,

under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.²

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/rl

Ref: ID# 358574

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the remaining information contains a 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.