



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Ms. Beth Moroney
Paralegal
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-15677

Dear Ms. Moroney:

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# 360371 (COSA File No. 09-1025).

The City of San Antonio (the "city") received a request for the names of personnel who executed search warrants and conducted inspection of two specified addresses on certain dates and related salary expenditures. You state that the city will release some of the requested information to the requestor. 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.

Initially, we note the submitted information contains documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As you make no further arguments against the disclosure of these documents, they must be released to the requestor.

We will now address your argument 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 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. You inform us that the city’s code compliance division (the “division”) investigates alleged violations of the city’s ordinances and that violation of certain ordinances is a criminal offense. We understand that the division refers such offenses for prosecution to the San Antonio Municipal Court. Therefore, we conclude that the division is a law enforcement agency for purposes of section 552.108.

You state that the remaining information pertains to pending criminal prosecutions. Based upon this representation, we conclude that the release of the remaining 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

In summary, the city must release the court filed documents, which we have marked, subject to section 552.022(a)(17) of the Government Code. The remaining information may be withheld under section 552.108(a)(1) 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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 360371

Enc. Submitted documents

c: Requestor
(w/o enclosures)