



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2009-17302

Dear Mr. Phillips:

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# 363514 (Fort Worth Public Information Request No. 5857-09).

The City of Fort Worth (the "city") received a request for incident report 09-104232. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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(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 that the submitted information pertains to the arrest of one or more individuals that resulted in criminal prosecution currently pending with the Tarrant County District Attorney's Office (the "district attorney"). You have provided an affidavit from the district attorney stating that the information sought directly relates to the preparation and prosecution of the case against the defendant. Based on your representation and the submitted affidavit, 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is generally applicable to incident report 09-104232.

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

You seek to withhold the names and identification numbers of undercover police officers from the basic information. Section 552.151 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.151. You represent to this office that the release of the names of the undercover police officers would cause the officers to face a substantial threat of physical harm. Based on your representation, we find that the city has demonstrated that release of the information at issue would subject the officers to a substantial threat of physical harm. We therefore conclude that the city must withhold the names and identification numbers of the undercover police officers, which you have marked, under section 552.151.

In summary, with the exception of basic information, the city may withhold incident report 09-104232 under section 552.108(a)(1) of the Government Code. However, within the basic information, the city must withhold the names and identification numbers of undercover police officers, which you have marked, pursuant to section 552.151 of the Government Code. The remaining basic information must be released.

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,

A handwritten signature in cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 363514

Enc. Submitted documents

c: Requestor
(w/o enclosures)