



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2009

Mr. Jason E. Moody
Public Information Officer
Cameron County District Attorney
974 East Harrison
Brownsville, Texas 78520

OR2009-17357

Dear Mr. Moody:

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# 363658.

The Cameron County Sheriff's Office (the "sheriff") received a request for all reports, photographs, and audio and video recordings related to a specified incident. 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 representative sample of information.¹

We note that section 552.022 of the Government Code is applicable to the requested information. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹We assume that the "representative sample" of information 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.

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). In this instance, the requested information includes documents filed with a court which are subject to section 552.022(a)(17). Thus, the sheriff may only withhold this information, which we have marked, if it is confidential under other law. Although you seek to withhold the information at issue under section 552.108, this is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a)(17). See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff may not withhold the information at issue under section 552.108. However, we will address the applicability of section 552.108 to the remaining information not subject to section 552.022.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The sheriff states that the submitted information is related to a pending criminal investigation and prosecution. Based on this representation and our review, we conclude that section 552.108(a)(1) is applicable in this instance. 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).

We note that 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 front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The sheriff must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff may withhold the remaining information under section 552.108(a)(1).

In summary, the sheriff must release the court documents we have marked pursuant to section 552.022(a)(17). With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a) 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 363658

Enc. Submitted documents

c: Requestor
(w/o enclosures)