



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2009

Mr. Charles T. Jeremiah  
Chamberlain, Hrdlicka, White, Williams & Martin  
Attorney for City of Pasadena  
1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2009-17464

Dear Mr. Jeremiah:

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# 364141.

The Pasadena Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident report. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you question whether the Act is implicated here because the requestor made his request for information under the Freedom of Information Act, which is a federal law that governs the release of information held by federal governmental bodies. *See* 5 U.S.C. § 552 (Freedom of Information Act). The Act is implicated whenever a requestor submits to a Texas governmental body a written request for inspection or copies of public information. *See* Gov't Code §§ 552.003(6) (defining "requestor"), .301(a) (after receiving "a written request for information," a governmental body must ask for a decision from the attorney general if it wishes to withhold that information). The Act only requires the request be made in writing. *See id.* § 552.301(c). Whether the requestor asserts a right to inspect public information under the Freedom of Information Act or other, similar laws does not affect the rights and duties of a governmental body to release or withhold public information under the Act. The requestor here made a written request to the department to inspect public

information; therefore, whether the department can withhold that information from release is determined by the Act. Accordingly, we will address your arguments under the Act against disclosure of the submitted information.

Next, we note the submitted information consists of a completed report, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." *Id.* § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold the submitted information under section 552.103. However, we will address the applicability of section 552.108 to the submitted information.

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 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). You inform us, and have submitted an affidavit stating, that the submitted information is related to a pending criminal investigation. Based on your representation, 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).

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. Thus, with the exception of basic information, which must be released, the department may withhold the submitted information 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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 364141

Enc. Submitted documents

c: Requestor  
(w/o enclosures)