



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2009-17480

Dear Mr. Walker:

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# 363962.

The Montgomery County Sheriff's Office (the "sheriff") received a request for a specified offense report. You claim that portions of the submitted information are 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 that the submitted information reveals that some of the submitted information has already been released to another requestor by the sheriff's records management division. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).* Section 552.108 is a discretionary exception under the Act and does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See Gov't Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver).* Accordingly, to the extent the sheriff has voluntarily released the submitted information to any member of the public, the

sheriff may not now withhold that information under section 552.108 of the Government Code. However, we note that the submitted information contains information that is subject to section 552.130 of the Government Code, which is a mandatory exception that cannot be waived.¹ See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Thus, to the extent the information at issue has been previously released by the sheriff, we must address whether any of the submitted information must now be withheld pursuant to section 552.130 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license or permit. See Gov't Code § 552.130(a)(1). We note that section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own Texas driver's license information under section 552.023 of the Government Code. See *id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987). However, the sheriff must withhold the Texas driver's license information not pertaining to the requestor, which we have marked, under section 552.130 of the Government Code.

To the extent the sheriff has not voluntarily released the submitted information to any member of the public, we address your claim under section 552.108 of the Government Code. 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). Generally, 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, and provide an affidavit from the Montgomery County District Attorney's Office confirming, that the information at issue relates to an open and pending criminal prosecution. Based upon your representation, the submitted affidavit, and our review, we conclude that the release of the information at issue 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, as you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, to the extent the sheriff has not voluntarily released the submitted information to any member of the public and with

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1).

In summary, to the extent the sheriff has voluntarily released the submitted information to any member of the public, it must be released to the requestor; however, in that case, the sheriff must withhold the information we have marked under section 552.130 of the Government Code.² To the extent the sheriff has not voluntarily released the submitted information to any member of the public and with the exception of basic information, the information at issue 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 at (512) 475-2497.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/dls

Ref: ID# 363962

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note, under this scenario, the remaining information at issue contains social security numbers. 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. Gov't Code § 552.147. However, the requestor has a right of access to his own social security number and it must be released to him. *See generally id.* § 552.023(b).