



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

Mr. Robert Massey
Assistant City Attorney II
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-17521

Dear Mr. Massey:

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# 369101 (ORR# 302).

The Wichita Falls Police Department (the "department") received a request for information related to police report number 09-090397. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a court-filed document. Section 552.022 of the Government Code states, in relevant part:

(a) [T]he following categories of information are 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). The submitted court-filed document may only be withheld if it is confidential under other law. Although the department seeks to withhold the court-filed

document under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other laws that make information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the court-filed document we have marked may not be withheld under section 552.103 or section 552.108. You assert the submitted information, including the court-filed document, is excepted under section 552.101 of the Government Code. As section 552.101 is other law for purposes of section 552.022, we will address your argument under this section for the court-filed document and the remaining submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You raise section 261.201 for the submitted information. However, the submitted report pertains to an aggravated assault between two adults. You have not demonstrated how this information was used or developed in an investigation of child abuse or neglect. *See* Fam. Code § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find no portion of the information at issue was used or developed in an investigation under chapter 261. Therefore, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we will address section 552.108(a)(1) of the Government Code for the information not subject to section 552.022(a)(17). 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: (1) 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 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 the requested information relates to a pending prosecution, and release of the information would interfere with the prosecution of the pending criminal case. Further, you have provided our office with a statement from the Wichita County District Attorney’s Office objecting to the release of the submitted information because its release could interfere with the pending criminal prosecution. Based on these representations, we conclude release of the information not subject to section 552.022(a)(17) will 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). Accordingly, section 552.108 is applicable to the information not subject to section 552.022(a)(17).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).¹ Thus, with the exception of basic information and the information subject to section 552.022(a)(17), you may withhold the submitted information under section 552.108(a)(1).²

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,

¹We note the basic information includes the arrestee’s social security number, which may be redacted pursuant to section 552.147 of the Government Code. Section 552.147(b) 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.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/sdk

Ref: ID# 369101

Enc. Submitted documents

c: Requestor
(w/o enclosures)