



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2009

Mr. Arthur Provenghi
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-17777

Dear Mr. Provenghi:

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# 364657.

The El Paso County Sheriff's Office (the "sheriff") received a request for the incident report and any supplements pertaining to case number 09-0900350. You state the sheriff will provide to the requestor some of the requested information, including basic information. *See* Gov't Code § 552.108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim the submitted incident report and supplements are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information contains a search warrant, which has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. You claim the court-filed search warrant is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the sheriff may not withhold

the court-filed search warrant, which we have marked, under section 552.108 of the Government Code. You claim, however, portions of the search warrant are excepted under section 552.130 of the Government Code. Because information subject to section 552.022(a)(17) may be withheld under section 552.130, we will consider the applicability of this exception to the search warrant, along with your arguments under sections 552.101, 552.108, and 552.130 for the remaining information not subject to section 552.022.

You assert the information not subject to section 552.022 is excepted from public disclosure 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.” *Id.* § 552.108(a)(1). 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). We note the information at issue includes a statutory warning and a notice of suspension. Because copies of these documents have been provided to the arrestee, we find their release will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the university may not withhold the statutory warning and notice of suspension under section 552.108(a)(1). You state the remaining information not subject to section 552.022 pertains to a pending criminal investigation. Based on your representations and our review, we determine 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). Accordingly, the sheriff may withhold the remaining information not subject to section 552.022 pursuant to section 552.108(a)(1) of the Government Code.¹ We note you have the discretion to release all or part of this information that is not otherwise confidential by law. *Gov’t Code* § 552.007.

You claim the Texas license plate number and vehicle identification number you have highlighted in the court-filed search warrant and the Texas driver’s license number you have highlighted in the statutory warning and notice of suspension are excepted under section 552.130 of the Government Code. This section provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Thus, the sheriff must withhold the highlighted license plate number and vehicle identification number in the search warrant and the highlighted driver’s license number in the statutory warning and notice of suspension under section 552.130 of the Government Code. As you have claimed

¹As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for portions of this information.

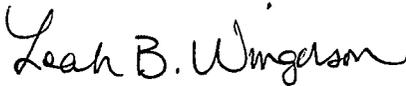
no other exceptions to disclosure for the remaining information in the search warrant, statutory warning, and notice of suspension, this information must be released.

In summary, with the exception of the submitted search warrant, statutory warning, and notice of suspension, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code. The sheriff must withhold the highlighted license plate number and vehicle identification number in the search warrant and the highlighted driver's license number in the statutory warning and notice of suspension under section 552.130 of the Government Code. The remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 364657

Enc. Submitted documents

c: Requestor
(w/o enclosures)