



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 14, 2010

Mr. Ron G. MacFarlane, Jr.
Dealey, Zimmerman, Clark, Malouf & MacFarlane, P.C.
3131 Turtle Creek Boulevard Suite 1201
Dallas, Texas 75219-5415

OR2010-00702

Dear Mr. MacFarlane:

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# 367349.

The Cedar Hill Police Department (the "department"), which you represent, received a request for all records pertaining to (1) a specified search warrant, (2) arrests of a named individual, (3) persons arrested on a specified date and address, and (4) a specified complaint and statement of fact. 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 information.

Initially, we note the submitted documents contain a search warrant that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. You claim the submitted court-filed document 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 department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. We note, however, that the search warrant contains some information that is subject to section 552.130 of the Government Code, which constitutes "other law" for the purposes of section 552.022.¹

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 provides that 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.² Gov't Code § 552.130(a)(1); (2). Therefore, the department must withhold the Texas motor vehicle record information we have marked in the search warrant under section 552.130 of the Government Code. The remaining information that is subject to section 552.022 must be released.

We now address your argument under section 552.108 of the Government Code for the remaining information you have marked. 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 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). A portion of the information you seek to withhold under section 552.108 relates to an internal affairs investigation conducted by the department. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also Open Records Decision No. 350* at 3-4 (1982). However, you explain that the information you have marked relates to an active criminal investigation. Based upon this representation and our review, we conclude that the release of the information you have marked 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, we find that section 552.108(a)(1) of the Government Code is applicable to the information at issue.

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*. The department must release basic information even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; *Open Records Decision No. 127* at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, you may withhold the remaining information you have marked from disclosure under section 552.108(a)(1).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must release the search warrant we have marked pursuant to section 552.022 of the Government Code; however, the department must withhold the Texas motor vehicle record information we have marked in the search warrant under section 552.130 of the Government Code. With the exception of basic information, the department may withhold the remaining information you have marked under section 552.108 of the Government Code. As no further exceptions to disclosure are raised, the remaining information must be released to the requestor.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 367349

Enc. Submitted documents

c: Requestor
(w/o enclosures)