



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2010

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2010-06792

Dear Ms. Messer:

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# 379112.

The City of Abilene (the "city") received two requests from the same requestor for a specified call sheet and all related documents, witness names, affidavits, and written statements, as well as a specified provision of the Penal Code and certain specified procedures of the Abilene Police Department and Abilene Police Academy. You indicate some responsive information has been released to the requestor. You also indicate you do not have information responsive to portions of the request.<sup>1</sup> You claim a portion of the requested information is subject to section 552.027 of the Government Code. 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.

---

<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

We understand you to contend that the requested portion of the Penal Code is subject to section 552.027 of the Government Code. We note that the Penal Code is commercially available. Section 552.027 provides that the Act does not require a governmental body to allow the inspection of information in a commercial publication purchased or acquired by the governmental body for research purposes if the publication is commercially available to the public. *See* Gov't Code § 552.027(a). Accordingly, we conclude that this commercially available information falls within the scope of section 552.027 and need not be released to the requestor.

Section 552.108(a) 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). 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 that the submitted information concerns an active criminal investigation that will likely result in prosecution. Based upon your representations and our review, we conclude the release of the submitted 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). Thus, we agree section 552.108(a)(1) of the Government Code is generally applicable to this information.

However, 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, front-page information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the submitted information under section 552.108 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\\_or1.php](http://www.oag.state.tx.us/open/index_or1.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,

A handwritten signature in cursive script that reads "Jennifer Burnett".

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 379112

Enc. Submitted documents

c: Requestor  
(w/o enclosures)