



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 22, 2011

Ms. Tiffany Bull  
Assistant City Attorney  
City of Arlington  
P.O. Box 1065  
Arlington, Texas 76004

OR2011-03910

Dear Ms. Bull:

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# 411871 (Arlington Reference Nos. 2777, 2778, 2779, 2789, 2790, 2791, 2797, 2798, 2800, 2813, 2825, 2903, 2918, 2912, & 2963).

The City of Arlington and the Arlington Police Department (collectively the "city") received eighteen requests from thirteen requestors for information related to a specified incident. Three of the requestors also seek information related to a named officer. You state some of the requested information is being released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information you have submitted, which we have marked, is not responsive to the requests at issue because it was created after the date the requests at issue were received. This ruling does not address the public availability of any non-responsive information, and the city need not release any non-responsive information in response to this request.

We also note the submitted information includes court documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the documents subject to

section 552.022(a)(17). Although you seek to withhold these documents under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court documents may not be withheld under section 552.108 and, as you raise no additional exceptions against their disclosure, must be released.

We have also marked information relating to a sex offender subject to registration under chapter 62 of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information to the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the city must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 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). You state, and provide an affidavit from a detective with the city's police department stating, the submitted information relates to a pending criminal investigation. Based on your representations and our review, we conclude that the release of the remaining responsive

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)(court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

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 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the marked court filed documents, which are subject to section 552.022(a)(17), must be released. The city must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure. With the exception of basic information, the city may withhold the remaining responsive information 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Ref: ID# 411871

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ref: ID# 411871

Enc. Submitted documents

PATRICK RANDOLPH  
ASSIGNMENT EDITOR  
KDFW FOX 4 NEWS  
400 NORTH GRIFFIN ST  
DALLAS TX 75202

DEITRIA COLEMAN  
NEWS ASSIGNMENT EDITOR  
KTVT CBS 11 NEWS  
10111 NORTH CENTRAL EXPWY  
DALLAS TX 75231

SHANE ALLEN  
KXAS NBC 5  
3900 BARNETT ST  
FORT WORTH TX 76103

LANCE CONRAD  
WFAA TV NEWS  
606 YOUNG ST  
FORT WORTH TX 75202

PATRICIA RIOS  
ASSIGNMENTS EDITOR  
THE 33 NEWS  
8001 JOHN W CARPENTER FREEWAY  
DALLAS TX 75247

JOANNA ALEXANDER  
2400 BOLTON BOONE  
DESOTO TX 75115

MARYSOL GONZALEZ  
ASSIGNMENT EDITOR  
2323 BRYAN ST STE 1900  
DALLAS TX 75201

TANYA EISERER  
THE DALLAS MORNING NEWS  
PO BOX 655237  
DALLAS TX 75265

KATE MORIN  
C/O TIFFANY BULL  
ASSISTANT CITY ATTORNEY  
CITY OF ARLINGTON  
PO BOX 1065  
ARLINGTON TX 76004

MIKE CONNER  
KXAS NBC 5  
3900 BARNETT ST  
FORT WORTH TX 76103

SUSAN SCHROCK  
FORT WORTH STAR TELEGRAM  
400 WEST SEVENTH ST  
FORT WORTH TX 76102

JOANIE WARE  
1702 GENTLE WIND DR  
ARLINGTON TX 76018

JIM DOUGLAS  
WFAA NEWS  
606 YOUNG ST  
DALLAS TX 75202