



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2011-06734

Dear Ms. Sangsvang:

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# 417925 (ORR Nos. W007039 & W007615).

The Fort Worth Police Department (the "department") received a request for information pertaining to a deceased individual. You claim the requested information is 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.¹

Initially, we note the requestor made a request for information pertaining to the deceased individual and two other named individuals on February 24, 2011. However, you have submitted correspondence from the requestor received by the department on March 21, 2011 in which the requestor modifies his request to ask only for information about the deceased individual. *See* Gov't Code § 552.222. Accordingly, the submitted information that does not pertain to the deceased individual is not responsive to the amended request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

¹You state that the department has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the City of Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code §§ 552.147 (b), 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

We must next address the department's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). The department received the request for information related to the deceased individual on February 24, 2011. On April 4, 2011, the department submitted to this office photographs that are responsive to the request for information related to the deceased individual. Although, as noted above, the requestor amended his request for information on March 21, 2011, the photographs submitted by the department on April 4, 2011 are responsive to the request received on February 24, 2011. Accordingly, the department did not submit the photographs to this office within fifteen business days of receiving the request for this information in accordance with section 552.301(e)(1)(D) of the Government Code.²

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department's claim under section 552.108 is not a compelling reason for nondisclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See id.* at 3. You have submitted a statement from the Chief of Misdemeanor Division of the Tarrant County Criminal District Attorney's Office (the "district attorney") objecting to the release of the requested information under section 552.108. Therefore, we will consider whether the department may withhold that information on behalf of the district attorney under section 552.108.

We next note that pages 103-104, 108, 111, 120-123, 173, and 177-179 of the file labeled "Exhibit C - (552.108)(10-103954) W7615.pdf" are documents that have been filed with the court. A document that has been filed with a court is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is

²We note the department complied with its procedural obligations under section 552.301(e) regarding the remaining responsive information.

confidential under other law. *See* Gov't Code § 552.022(a)(17). Although the department and district attorney assert this information is excepted from disclosure under section 552.108, as noted above section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* ORD 177. Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed documents under section 552.108. Thus, the department must release pages 103-104, 108, 111, 120-123, 173, and 177-179 of the file labeled "Exhibit C - (552.108)(10-103954) W7615.pdf" to the requestor.

The department and the district attorney assert the remaining responsive information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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[.]" 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney states the remaining responsive information relates to a pending criminal prosecution. Based on this representation, we conclude the 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) (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).

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*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1).³

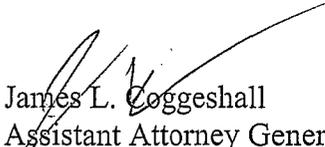
To conclude, the department must release pages 103-104, 108, 111, 120-123, 173, and 177-179 of the file labeled "Exhibit C - (552.108)(10-103954) W7615.pdf" and the basic information in the remaining documents to the requestor. The department may withhold the remaining responsive information under section 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.

³As we are able to resolve this matter under section 552.108, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 417925

Enc. Submitted documents

c: Requestor
(w/o enclosures)