



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2013

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-04327

Dear Ms. Byles:

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# 482101 (W022764).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified case. You state the department is releasing some information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We note the submitted information includes documents titled "Magistrate Warning" and "Election of Counsel" which are magistrate-signed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) requires disclosure of "information that is also contained in a public court record," unless the information is confidential under the Act or other law. Gov't Code § 552.022(a)(17). You raise section 552.108 of the Government Code for this information. However, this is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Record Decision

¹Although you also raise section 552.101 of the Government Code, you have provided no arguments in support of this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the department may not withhold these court-filed documents, which we have marked, under section 552.108 of the Government Code. As you raise no other exceptions for the marked court-filed documents, they must be released.

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(a)(1) 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 have provided an affidavit from the Tarrant County District Attorney’s Office confirming, the information at issue relates to pending prosecutions against two defendants for the offense of engaging in organized crime. Based on this representation, we conclude the release of the information at issue 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 applicable to the remaining information.

As you acknowledge, 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 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which you state is being released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the department must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

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.

²We note basic information includes the arrestee’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 482101

Enc. Submitted documents

c: Requestor
(w/o enclosures)