



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2014

Ms. Alexis G. Allen
Counsel for the Town of Bartonville
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard Street
Dallas, Texas 75201

OR2014-02411

Dear Ms. Allen:

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# 513446 (Reference Nos. 63699 and 64136).

The Bartonville Police Department (the "department"), which you represent, received two requests from the same requestor for the probable cause affidavit and narrative associated with a specified case. You state the department will redact a social security number.¹ You claim 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 address your discussion of article 15.26 of the Code of Criminal Procedure, which provides in part:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

¹Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

Crim Proc. Code art. 15.26. We interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Accordingly, article 15.26 does not make the submitted information maintained by the department expressly public.

Nevertheless, we note some of the submitted information is signed by a magistrate, and a document that has been filed with a court is expressly public under section 552.022 of the Government Code. *See* Gov't Code § 552.022(a)(17). Such records may not be withheld unless they are made confidential under the Act or other law. *Id.* However, section 552.108 does not make information confidential. *See* Open Records Decision 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 the information subject to section 552.022(a)(17), which we marked, under section 552.108(a)(1) of the Government Code. As you raise no further exceptions for this information, it must be released. We will address your assertion of section 552.108 of the Government Code for the remaining information.

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 the remaining information relates to an active criminal investigation and release of the information would interfere with that investigation. *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). Based on these representations and our review, we conclude the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the information we have marked under section 552.022(a)(17), the department may withhold the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, sweeping initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 513446

Enc. Submitted documents

c: Requestor
(w/o enclosures)