



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2014

Mr. Richard Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2014-05044

Dear Mr. Bilbie:

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# 517756.

The City of Harlingen (the "city") received a request for the search warrant and affidavit pertaining to specified arrests.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information includes court-filed 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, which we have marked, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Furthermore, although you

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

seek to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103), 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the marked court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy or under section 552.103 or section 552.108 of the Government Code. As you raise no other exceptions to disclosure, the city must release the marked court-filed documents. However, we will address your arguments against the disclosure of the remaining information, which is not subject to section 552.022(a)(17).

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[.]” 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 information at issue relates to an ongoing criminal investigation and possible prosecution of the case. Based on this representation and our review, we find release of the 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, the city may withhold the information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.²

In summary, the city must release the information subject to section 552.022(a)(17) of the Government Code. The city may withhold the remaining information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.

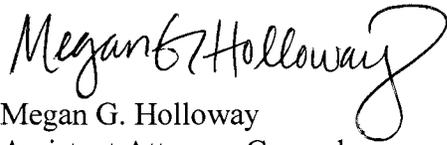
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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 cursive script that reads "Megan G. Holloway". The signature is written in black ink and is positioned above the typed name.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 517756

Enc. Submitted documents

c: Requestor
(w/o enclosures)