



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2014

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2014-10419

Dear Ms. Grace:

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# 531287.

The Austin Police Department (the "department") received a request for information regarding the activities of a named police officer during a specified time period. We understand the department has released or will release some information to the requestor. 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.

We first note, and you acknowledge, the department did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Therefore, under section 552.302 of the Government Code, the information at issue is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 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). Nevertheless, the law enforcement interests of a governmental body other than the one that did not comply with section 552.301 can provide a compelling reason for

non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You inform us the Travis County District Attorney's Office (the "district attorney's office") asserts a law enforcement interest in the submitted information. Accordingly, we will determine whether the department may withhold the submitted information on behalf of the district attorney's office under section 552.108.

Next, we note the submitted information includes search warrants subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you seek to withhold the submitted search warrants under section 552.108 of the Government Code, as noted above, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5, 177 at 3. As such section 552.108 does not make information confidential for the purposes of section 552.022. Accordingly, the submitted search warrants may not be withheld under section 552.108. However, we note portions of the submitted search warrants are subject to section 552.130, which makes information confidential under the Act.¹ Therefore, we will address the applicability of section 552.130 to the information subject to section 552.022(a)(17).

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 district attorney's office objects to the release of the remaining information because doing so would interfere with its pending criminal prosecutions. *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).

We note, however, the remaining information includes DIC-24 statutory warnings and DIC-25 notices of suspension. The department provided copies of these forms to the arrestees. You have not explained how releasing this information, which has already been seen by the arrestees, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108.

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 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 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. See Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the department must release the submitted search warrants pursuant to section 552.022 of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the search warrants and the DIC-24 and DIC-25 forms, the department must withhold the information we have marked under section 552.130(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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

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Enc. Submitted documents

c: Requestor
(w/o enclosures)