



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2015-10027

Dear Mr. Kopp:

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# 570500 (COSA File Nos. W067095, W067164).

The City of San Antonio (the "city") received two requests from the same requestor for information pertaining to two named officers and two specified incidents. You state the city will release responsive information from the officers' civil service files. You state the city does not possess information responsive to portions of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note the submitted information includes magistrate-signed documents, which are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the 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 raise section 552.108 of the Government Code as an exception to disclosure of this information, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022(a)(17). Therefore, the magistrate-signed documents, which we have marked, may not be withheld under section 552.108 of the Government Code. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address the applicability of this section to the information subject to section 552.022(a)(17).³

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 the submitted information relates to active criminal investigations. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal 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). We note, however, the information at issue includes DIC-24 statutory warning and DIC-25 notice of suspension forms. Because copies of these documents have previously been released to the arrestee, we find you have not shown how release of the documents will interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). As the remaining information at issue has not been previously released, we find the city has demonstrated release of this information would interfere with the detection, investigation, or prosecution of crime.

However, we note 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 186-88; Open

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information and the DIC-24 and DIC-25 forms, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we conclude the city must withhold the information we have marked in the records subject to section 552.022(a)(17) and in the DIC-24 and DIC-25 forms under section 552.130 of the Government Code.

In summary, with the exception of the basic information, the information subject to section 552.022(a)(17) of the Government Code, and the DIC-24 and DIC-25 forms, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the magistrate-signed documents, and the DIC-24 and DIC-25 forms, the city must withhold the information we have marked under section 552.130 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

⁴As we make this determination, we do not address your claim under section 552.101 of the Government Code for this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)