



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 21, 2016

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, Third Floor  
Richmond, Texas 77469

OR2016-14024

Dear Mr. Grove:

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# 614949.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests for the probable cause affidavit pertaining to a specified incident. The first requestor also seeks the search warrant and search warrant affidavit pertaining to the specified incident. You state you do not have the requested search warrant or search warrant affidavit. You indicate you have released some information to the second 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.

Initially, you inform us and provide documentation showing, you released a redacted version of the specified probable cause affidavit to the second requestor. You now seek to withhold the information you released to the second requestor under section 552.108 of the Government Code. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive

right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). You seek to withhold the released information under section 552.108 of the Government Code, which may be waived. *See* Open Records Decision No. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, section 552.108 does not prohibit the release of information or make information confidential. Thus, the sheriff's office may not now withhold from the first requestor the information you released to the second requestor under section 552.108 of the Government Code. However, as section 552.130 of the Government Code makes information confidential, we will consider its applicability to the information you released.<sup>1</sup> We will also consider your arguments under section 552.108 for the information you have not released to either requestor.

Section 552.108(a) 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: (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(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). The sheriff's office states the information at issue relates to a pending criminal investigation or prosecution. 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the sheriff's office may withhold the information you have not already released under section 552.108(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Upon review, we find portions of the remaining previously released information consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information that was not previously released under section 552.108(a)(1) of the Government Code. The sheriff's office must

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

release to the first requestor the information that was previously released to the second requestor pursuant to section 552.007 of the Government Code; however, in releasing this information, the sheriff's office must withhold motor vehicle record 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](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 614949

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)