



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2005

Mr. J. David Dodd III  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2005-09657

Dear Mr. Dodd:

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# 234939.

The City of Allen (the "city"), which you represent, received requests for information pertaining to a specified incident. You claim that the requested 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.

Initially, we note that the submitted information contains documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Sections 552.103 and 552.108 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by the governmental body. *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); Open Records Decision Nos. 542 (1990) (statutory predecessor to section 552.103 may be waived), 177 (1977) (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). Therefore, sections 552.103 and 552.108 do not constitute "other law" for purposes of section 552.022(a)(17). Although you also argue that the court-filed document should be withheld on the basis of common law privacy, information that is otherwise confidential under common law privacy may not be withheld in a court-filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual

assault victim's privacy right not violated by release of information in public court document). Accordingly, the city may not withhold information in the court-filed documents pursuant to section 552.103, section 552.108, or common law privacy. We note, however, that sections 552.117, 552.136, and 552.147 of the Government Code, which do constitute other law for purposes of section 552.022(a)(17), are applicable to information in these documents.

Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Accordingly, the city must withhold the information we have marked in the court-filed documents under section 552.117(a)(2).

The court-filed documents also contain account numbers. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” The city must withhold the account numbers we have marked under section 552.136.

The court-filed documents also contain social security numbers. Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the city must withhold the marked social security numbers in the court-filed documents under section 552.147.<sup>2</sup>

The city asserts that the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) 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.” 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* Gov't Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body agency may withhold the information under section 552.108 if (1) it

---

<sup>1</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (codified at Tex. Gov't Code § 552.147).

<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. The Texas Rangers, in correspondence to this office, assert that release of the information at issue could interfere with an ongoing criminal investigation. Based on this representation, we conclude that the release of the remaining 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), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Because the law enforcement interests at issue here belong to the Texas Rangers, the city must consult with the Rangers and release the types of information that are considered to be front page information to the requestor, even if this information is not actually located on the front page of an offense report. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The city may withhold the remaining information under section 552.108(a)(1).<sup>3</sup>

To conclude, the city must release the marked documents that are subject to section 552.022; however, it must withhold in these documents the information marked under sections 552.117, 552.136, and 552.147. With the exception of the basic front-page offense and arrest information, the city may withhold the remaining information under section 552.108.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

---

<sup>3</sup>As we are able to resolve this under section 552.108, we do not address the city's other arguments for exception of this information.

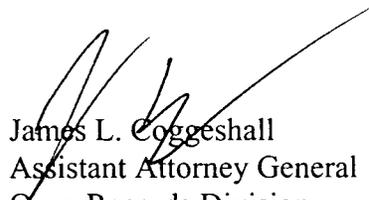
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jpa

Ref: ID# 234939

Enc. Submitted documents

c: Mr. Mike Jackson  
Ms. Tiara Ellis  
The Dallas Morning News  
P.O. Box 940567  
Plano, Texas 75094-0567  
(w/o enclosures)

Ms. Barbara Horton  
WFAA-TV  
606 Young Street  
Dallas, Texas 75202  
(w/o enclosures)

Mr. Greg Millett  
J.E. Rose  
Richard Turner  
KDFW Fox 4 News  
400 N. Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)

Ms. Cynthia Leyons-Garcia  
Telemundo Channel 39  
3900 Harry Hines Blvd.  
Dallas, Texas 75219  
(w/o enclosures)

Anabel Marguez  
The Dallas Morning News  
508 Young Street, 2<sup>nd</sup> Floor  
Dallas, Texas 75206  
(w/o enclosures)

Mr. Domingo Garcia  
1107 Jefferson Blvd.  
Dallas, Texas 75208  
(w/o enclosures)

Mr. Humberto Guerrero  
902 W. Commerce street  
Dallas, Texas 75208  
(w/o enclosures)

Ms. Patrica Collier  
Mr. Clif Caldwell  
Mr. Jack Fink  
CBS 11 News  
10111 N. Central Expwy.  
Dallas, Texas 75231  
(w/o enclosures)

Mr. Daniel Gomez  
P.O. Box 595303  
Dallas, Texas 75359  
(w/o enclosures)

Mr. Eloina Juarez  
UNIVISION  
232 Bryan Street  
Dallas, Texas 75201  
(w/o enclosures)

Mr. Gilberto Cortez  
El Sol de Texas  
2526 W. Mockingbird Lane  
Dallas, Texas 75235  
(w/o enclosures)