



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2008

Mr. Bob D. Odom
Assistant District Attorney
27th Judicial District
P.O. Box 540
Belton, Texas 76512-0540

OR2008-08086

Dear Mr. Odom:

~~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# 313229.~~

The District Attorney for the 27th Judicial District (the "district attorney") received a request for information pertaining to a specified incident. You state that you have released a portion of the requested information. You also state that you do not have information responsive to portions of the request.¹ Further, you state that you will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the arguments you claim and reviewed the information you have submitted.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create information, or obtain information that is not held by or on behalf of the district attorney. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

²Section 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.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes. You seek to withhold Exhibit B under article 39.14 of the Code of Criminal Procedure. Article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not, however, make information expressly confidential for purposes of section 552.101. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under Gov’t Code § 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, the district attorney may not withhold Exhibit B under section 552.101 in conjunction with article 39.14 of the Code of Criminal Procedure.

Next, you claim section 552.108(a)(1) for Exhibit B. Section 552.108(a)(1) of the Government Code generally excepts from disclosure information held by a law enforcement agency 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. *See* Gov’t Code § 552.108(a)(1). A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that Exhibit B relates to pending criminal prosecution. Based on this representation and our review of Exhibit B, we conclude that its release 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186. The district attorney must release basic information, including a detailed description of the offense and arrest information, even if this information does not literally appear on the front page of an incident or arrest report. *See id.* at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the district attorney may withhold Exhibit B under section 552.108 of the Government Code.³

³As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Next, you state that a portion of the information in Exhibit A is subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find that the district attorney must withhold the Texas motor vehicle record information it has marked, in addition to the information we have marked, in Exhibit A under section 552.130 of the Government Code.

In summary, with the exception of basic information, the district attorney may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The district attorney must withhold the Texas motor vehicle record information it has marked, in addition to the information we have marked, in Exhibit A under section 552.130 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

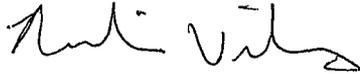
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ~~ID# 313229~~

Enc. Submitted documents

c: Mr. Miguel F. Garza
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(w/o enclosures)