



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 6, 2008

Ms. Laura Garza Jimenez
Nueces County Attorney
Nueces County Courthouse
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2008-10707

Dear Ms. Jimenez:

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# 318150.

The Nueces County Sheriff's Department (the "sheriff") received a request for information regarding a specified incident. You state that you will withhold social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, consists of court-filed documents. 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). Although you assert that these documents are excepted under sections 552.103 and 552.108 of the Government Code, these sections 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 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 586 (1991) (governmental body may waive section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the sheriff may not withhold the court-filed documents we have marked under section 552.103 or section 552.108 of the Government Code. As you raise no other

¹Section 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.

exceptions to disclosure of this information, the court-filed documents must be released to the requestor.

We now address your section 552.108(a)(1) claim with regard to the submitted information that is not subject to section 552.022(a)(1) of the Government Code. Section 552.108 of the Government Code excepts from public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate, and provide an affidavit from the Nueces County District Attorney’s Office stating, that the submitted information relates to a pending criminal prosecution. Based on your representation and the affidavit, 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is applicable to the remaining submitted information.

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*. *See* 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, you may withhold the remaining submitted information from disclosure based on section 552.108(a)(1).² We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the court-filed documents, which we have marked, must be released to the requestor pursuant to section 552.022 of the Government Code. With the exception of basic information, which must be released, the sheriff may withhold the remaining information under section 552.108 of the Government Code.

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, 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).

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). If the governmental body does not file suit over 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).

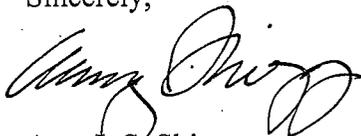
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

