



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2008

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2008-13799

Dear Mr. Noga:

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# 324380.

The City of Coppell (the "city"), which you represent, received a request for all information regarding a named individual in a specified case. You state the city has released or will release some of the requested information to the requestor.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

We first note some of the submitted information is subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the court records that are subject to section 552.022(a)(17). Although you seek to withhold these

¹We understand the requestor to represent the named individual.

²Although you raise section 552.117 of the Government Code, you do not present any arguments against disclosure under that section, nor does our review of the submitted information reveal any information subject to section 552.117. Thus, we do not address your argument under section 552.117.

court records under section 552.108, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the city may not withhold the marked court records under section 552.108 and must release that information pursuant to section 552.022(a)(17).

We will, however, address your argument under section 552.108 for the remaining submitted information. 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[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the requested information relates to a pending criminal prosecution. Based on this representation, we conclude release of the 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, we note and you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic, front-page information refers to the information held to be public in *Houston Chronicle*, and includes, among other things, the arrestee's name and a detailed description of the offense. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been or will be released, the city may withhold the submitted information under section 552.108(a)(1).³

We note the remaining submitted information contains a Texas license plate number protected by section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] (2) a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). We have marked the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information described in *Houston Chronicle* does not include information subject to section 552.130 of the Government Code.

information the city must withhold in the remaining submitted documents under section 552.130 of the Government Code.

In summary, the information we have marked under section 552.022 must be released to the requestor. With the exception of basic information, which must be released, the city may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked in the remaining submitted documents under section 552.130 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 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).

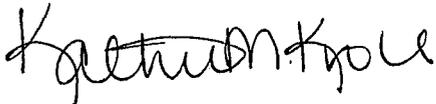
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Katherine M. Kroll". The signature is fluid and cursive, with the first name being the most prominent.

Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 324380

Enc. Submitted documents

c: Mr. Tim Clancy
3131 McKinney Avenue, Suite 800
Dallas, Texas 75204
(w/o enclosures)