ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

Ms. Martha T. Williams
Olson & Olson L.L.P.
Wortham Tower Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-00928

Dear Ms. Williams:

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# 333424.

The Rosenberg Police Department (the "department"), which you represent, received a request for fifteen categories of information relating to a named individual's arrest for public intoxication, a named arresting officer, and other cases of public intoxication and or driving while intoxicated ("DWI"). You inform us that the department has no information that is responsive to parts of the request.[1] You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.[2]

We first note that certain information has been redacted from the submitted documents. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301(a), .302. Pursuant to

[1]We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

[2]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

section 552.301(e)(1)(D), the governmental body must submit the requested information at issue, or representative samples if the information is voluminous, unless the information is the subject of a previous determination. *See id.* § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). Pursuant to the previous determination issued under section 552.117(a)(2) of the Government Code in Open Records Decision No. 670 (2001), all governmental bodies are authorized to withhold certain personal information relating to a peace officer, including the officer's current and former home addresses and telephone numbers, personal cell phone and pager numbers, social security number, and family member information, without the necessity of requesting a decision under the Act. *See* ORD 670 at 6-7. Moreover, 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 under the Act. However, some of the information that the department has redacted does not fall within the scope of the previous determination in ORD 670 or section 552.147. You do not indicate, and our own records do not otherwise reflect, that the department is authorized to withhold any other types of information without requesting a decision. In this instance, we are able to ascertain the nature of the redacted information and thus are not prevented from determining whether it is excepted from disclosure. In the future, however, the department should refrain from redacting any information submitted to this office in connection with a request for a decision under the Act that is not encompassed by a previous determination or section 552.147(b).

We next note that the some of the submitted representative sample of information does not appear to be responsive to the instant request. You indicate that the representative sample corresponds to parts (h), (i), (k), and (o) of the request, which encompass information relating to the named individual's arrest and to other cases of public intoxication or DWI involving the named arresting officer or the department. Some of the representative sample of information does not appear to involve either the named individual or other public intoxication or DWI cases. To the extent that the representative sample of information does not involve either the named individual's arrest or other cases of public intoxication or DWI, any such information is not responsive to the request. This decision does not address the public availability of any information that is not responsive to the request, and any such information need not be released to the requestor. To the extent that the submitted information is responsive to the request, we will consider your exceptions to disclosure.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 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 inform us that the named individual's arrest has resulted in a pending prosecution. We understand you to claim that the release of the records of that arrest, the arresting officer's personnel records, and the records of other cases involving the arresting officer and public intoxication or DWI would interfere with the prosecution. Based on your representations,

we conclude that section 552.108(a)(1) is generally applicable to those types of information. You also inform us that the remaining information at issue is related to pending criminal investigations. You contend the release of the remaining information would interfere with those investigations. Based on your representations, we conclude that section 552.108(a)(1) also is generally applicable to the rest of the responsive information. *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).

We note that 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 186-88. The department must release basic information, including a detailed description of each offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the responsive information under section 552.108(a)(1). As we are able to make these determinations, we need not address the other exceptions you claim.[3]

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

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[3]We note that section 552.103 of the Government Code, which you also claim, does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

Ref: ID# 333424

Enc: Submitted information

c: Requestor
(w/o enclosures)