



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 6, 2009

Mr. R. Kinley Hegglund, Jr.  
Senior Assistant City Attorney  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2009-01593

Dear Mr. Hegglund:

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# 335497.

The Wichita Falls Police Department (the "department") received a request for two specified police reports. You state that you have released basic information from these reports to the requestor. You claim that the submitted information is excepted from disclosure under sections 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 a portion of the submitted information is subject to section 552.022 of the Government Code, which provides that:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). Report No. 08-112071 consists of a completed investigation made by the department. A completed investigation must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. You claim the submitted information is subject to section 552.103 of the Government Code. Section 552.103 is a discretionary exception and, thus, does not make information confidential. *See, e.g., 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 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, the department may not withhold Report No. 08-112071 under section 552.103 of the Government Code. However, you have submitted an affidavit from the District Attorney's Office of Wichita County (the "district attorney") that states the release of the report at issue "would interfere with prosecution of this case." Thus, we understand the district attorney to raise section 552.108 of the Government Code. Therefore, we will consider whether the department may withhold Report No. 08-112071 on behalf of the district attorney under section 552.108, along with the department's claim under section 552.108 for the remaining information.

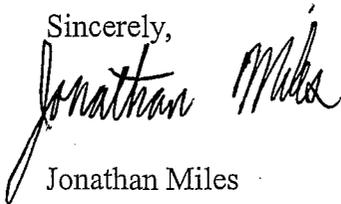
Section 552.108(a)(1) excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" 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). The department states Report No. 08-100523 relates to a pending criminal investigation. In its affidavit, the district attorney states that the Report No. 08-112071 relates to a pending criminal prosecution. Based on the department's and district attorney's representations, we conclude that release of these reports 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 [14<sup>th</sup> 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, however, 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). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic front page offense and arrest information, which you state you have released, you may withhold the submitted information from disclosure based on section 552.108(a)(1).

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](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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 335497

Enc. Submitted documents

c: Requestor  
(w/o enclosures)