



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

Ms. Cheryl K. Byles and Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2009-02597

Dear Ms. Byles and Mr. Phillips:

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# 335879 (Fort Worth PIR Nos. 0941-09 and 1256-09).

The City of Fort Worth and the Fort Worth Police Department (collectively the "city") received two requests for information pertaining to a specified incident.¹ You state you have redacted certain Texas-issued motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code.² See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim the submitted information is excepted from disclosure under sections 552.101, 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 section 552.022(a)(17) of the Government Code is applicable to some of the submitted information. 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

¹You inform us one of the requestors has withdrawn his request for information.

²Section 552.147(b) 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.

expressly confidential under other law. Gov't Code § 552.022(a)(17). We have marked the information that is subject to section 552.022(a)(17). Although you seek to withhold these documents under section 552.108 of the Government Code, section 552.108 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 court-filed documents under section 552.108 of the Government Code. You also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information.³ We note, however, that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city may not withhold the court-filed documents, which we have marked, based on section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure of this information, the information subject to section 552.022(a)(17) must be released to the requestor.

You seek to withhold the remaining information under section 552.108(a)(1) of the Government Code, which 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit confirming, that the Tarrant County District Attorney objects to the release of the information at issue because it pertains to a pending criminal prosecution. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Based on this representation and our review, we conclude that the release of the remaining submitted 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.*, 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-

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy.

page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the 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 city may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the city must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

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,



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

ALS/jb

Ref: ID# 335879

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we do not address your remaining arguments against disclosure.