



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2009

Mr. J. David Dodd, III  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
Attorneys and Counselors at Law  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2009-03571

Dear Mr. Dodd:

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# 337610.

The Allen Police Department (the "department"), which you represent, received a request for a named department officer's personnel and training records, specified portions of the department's manual of procedures, department officer training curriculum and requirements, all DWI offense/arrest reports by the named officer, and daily work logs for the named officer during a specified time period. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have only submitted information in response to the request for the named officer's personnel and training records and information concerning one DWI arrest by the named officer that occurred during the specified time period. To the extent any information responsive to the other portions of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address the requestor's contention that some of the requested information may be subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) of the Government Code 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). Upon review of the submitted information, we

conclude that no information subject to section 552.022(a)(17) was submitted by the department to this office for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we note some of the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under [the Act] 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[.]

*Id.* § 552.022(a)(1). The submitted information contains completed evaluations, which 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 evaluations are excepted under section 552.103 of the Government Code. Section 552.103, however, is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *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 No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold the submitted evaluations under section 552.103 of the Government Code. While you also claim the submitted information is excepted from disclosure under section 552.108, section 552.108 is also a discretionary exception to disclosure that protects a governmental body's interests, and therefore is not other law for purposes of section 552.022(a). However, section 552.022(a)(1) specifically allows for the exception of information under section 552.108. Therefore, we will address your argument under this exception for the evaluations subject to section 552.022(a)(1), as well as the remaining information.

Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

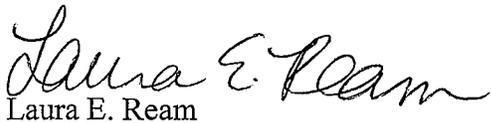
You state that the submitted information relates to an pending criminal prosecution. We note that the named police officer was the arresting officer in the submitted arrest report. You also represent that the named police officer is expected to testify in the pending prosecution. Based on your representations and our review of the submitted information, we conclude that section 552.108(a)(1) is applicable to the submitted 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). Basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining claim against disclosure, 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).

Ref: ID# 337610

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)