



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-05422

Dear Ms. Chang:

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# 340631.

The Houston Police Department (the "department") received a request for a specified incident report and any disciplinary records concerning the officers involved. You state you will release some of the requested information to the requestor. You also state that the department does not possess any information responsive to the request for disciplinary records concerning the officers involved in the incident.¹ You claim that the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution

¹We note that Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

of crime.” Gov’t Code § 552.108(a). Generally, 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), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal prosecution. Based upon this representation and our review, we conclude that the release of the 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. per curiam*, 536 S.W.2d. Thus, we conclude that section 552.108 is applicable to the information at issue.

We note, and you acknowledge, 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* 531 S.W.2d at 186-87. Accordingly, with the exception of basic information, which you state will be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

The basic information contains the social security number of an arrestee. Section 552.147 of the Government Code authorizes a governmental body to redact “[t]he social security number of a living person.”² Gov’t Code § 552.147. Therefore, the department may withhold the social security number of the arrestee pursuant to section 552.147.

In summary, with the exception of basic information, which you state will be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the department may also withhold the social security number of the arrestee under section 552.147 of the Government Code.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

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.

³As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

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, appearing to read "Greg Henderson", written over the typed name.

Greg Henderson
Assistant Attorney General
Open Records Division

GH/jb

Ref: ID#340631

Enc. Submitted documents

c: Requestor
(w/o enclosures)