



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2009

Mr. Miguelangel Matos
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-06277

Dear Mr. Matos:

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# 342771.

The Bandera County Sheriff's Office (the "sheriff"), which you represent, received a request for information pertaining the hiring, the job performance, and the firing of a named police officer.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.115, 552.119, 552.130, and 552.140 of the Government Code. You also provide documentation showing that you notified the individual whose privacy interests are at issue in the request and of his right to submit arguments to this office as to why the information should not be released.² *See generally* Gov't Code §§ 552.304 (providing that interested party may submit comments stating why information should or should not be released), .305(d). We have considered the exceptions you claim and reviewed the submitted information.

¹We note the requestor has excluded home addresses, telephone numbers, family member information, and social security numbers of peace officers from the request. Thus, any such information contained within the submitted documents is not responsive to the present request. Accordingly, we do not address this information and it need not be released.

²As of the date of this decision, this office has received no correspondence from the individual in question.

Initially, you state that the sheriff sought clarification from the requestor. *See id.* § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You inform us that the sheriff has not received a response from the requestor. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the sheriff to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

Next, we note the submitted information contains completed evaluations and reports that are subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). Sections 552.103 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect 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 Gov't Code § 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); Open Records Decision No. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103 and 552.111 are not "other law" that make information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the information that is subject to section 552.022(a)(1) under section 552.103 or under section 552.111. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will address your argument under section 552.108 for this information. Also, because sections 552.101, 552.115, 552.119, 552.130, and 552.140 of the Government Code are "other law" for the purpose of section 552.022, we will consider the applicability of these exceptions to the submitted information. We will also address your claim under sections 552.103 and 552.111 for the information that is not subject to section 552.022(a)(1).

Next, we note the submitted information includes accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release

a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the sheriff with two of the three pieces of information. Accordingly, the sheriff must withhold the accident reports pursuant to section 550.065 of the Transportation Code.

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 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 is related to a pending criminal investigation and possible prosecution. Based upon this representation, we conclude that the release of the remaining 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 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* 531 S.W.2d at 186-88. Thus, with the exception of the basic front-page offense and arrest information, the sheriff may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.

In summary, the sheriff must withhold the submitted accident report forms under section 552.101 of the Government Code in conjunction with section 550.065(c) of the Transportation Code. Except for basic information, the sheriff may withhold the remaining information at issue under section 552.108(a)(1) 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,

³As our ruling is dispositive, we need not address your remaining arguments 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).

Mr. Miguelangel Matos - Page 4

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 cursive script that reads "Paige Savoie".

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 342771

Enc. Submitted documents

cc: Requestor
(w/o enclosures)