



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 19, 2009

Ms. Susan Camp-Lee
Sheets & Crossfield P.C.
Attorneys for the City of Elgin
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-06778

Dear Ms. Camp-Lee:

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# 343715.

The City of Elgin (the "city"), which you represent, received eight requests from the same requestor for specified law enforcement records, the names of all persons and charges for people arrested by the Elgin Police Department (the "department") in 2008, and several categories of information pertaining to the use of tasers by the department. You state that the city does not have any information responsive to several categories of the requests.¹ You state that the city will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note that the city initially raised sections 552.101 and 552.117 of the Government Code but has since withdrawn its claim under those sections. Accordingly, we do not address sections 552.101 and 552.117.

Initially, we note that Exhibit B includes information that has been filed with a court. 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). Although you seek to withhold the court-filed information, which we have marked, under section 552.108 of the Government Code, that section 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 any of the marked information that has been filed with a court under section 552.108 of the Government Code. As you raise no further exceptions for the information that is subject to section 552.022(a)(17), it must be released. We will, however, consider your claims for the information that is not subject to section 552.022.

You claim that remaining information in Exhibit B is excepted under section 552.108 of the Government Code. Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit B is related to a current criminal prosecution and investigation. Based on your representations and our review, we conclude that the release of the remaining information in Exhibit B 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). Thus, section 552.108(a)(1) is generally applicable to the remaining information in Exhibit B.

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-8; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code.³ We note that you have the discretion to release all or part of Exhibit B that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you claim that a portion of Exhibit C is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[,], a motor vehicle title or registration issued by an agency of this state[,], or a personal identification document issued by an agency of this state[.]” *Id.* § 552.130. Upon review, we agree that the city must withhold the Texas motor vehicle and personal identification information you have marked in Exhibit C under section 552.130.

In summary, the information we have marked in Exhibit B under section 552.022(a)(17) of the Government Code must be released. With the exception of basic information, which must be released, the city may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code. The city must withhold the information you have marked in Exhibit C under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁴

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.

³As our ruling is dispositive, we need not address your remaining argument against the disclosure of Exhibit B.

⁴We note the remaining information contains a social security number. Section 552.147(b) of the Government Code 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. Gov't Code § 552.147.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 343715

Enc. Submitted documents

c: Requestor
(w/o enclosures)