



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2009

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam L.L.P.
Attorney for City of Ovilla
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-10094

Dear Ms. White:

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# 349584.

The City of Ovilla (the "city"), which you represent, received a request for the following information: 1) a specified police investigation; 2) specified city ordinances; and 3) all open records request forms submitted by a named individual. You claim the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the submitted information includes copies of city ordinances. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body's public proceedings are among most open of records). Therefore, the ordinances that we have marked must be released.

We next note that the remaining information includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of

¹We understand Exhibit C was submitted for informational purposes only.

“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). We have marked the information that is subject to section 552.022(a)(17). Although you seek to withhold that information under sections 552.103 and 552.108 of the Government Code, those sections 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); 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, sections 552.103 and 552.108 are not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court-filed document may not be withheld under section 552.103 or section 552.108 and must be released.

Next, you raise section 552.108 of the Government Code for the remaining information. Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information is related to a pending criminal prosecution. You inform us that the individual named in the request is a potential witness for the criminal prosecution, and you state that release of the requested open records request forms submitted by the named individual would interfere with this ongoing criminal prosecution. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

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-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

²As our ruling under section 552.108 is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

In summary, the city must release the marked ordinances. The marked court-filed document must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining information under section 552.108 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/rl

Ref: ID# 349584

Enc. Submitted documents

cc: Requestor
(w/o enclosures)