



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 29, 2009

Ms. Debra A. Drayovitch  
Attorney for the City of Corinth  
Drayovitch, P.C.  
620 West Hickory  
Denton, Texas 76201

OR2009-10508

Dear Ms. Drayovitch:

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# 355268.

The Corinth Police Department (the "department"), which you represent, received a request for "all affidavits, arrest warrants and search warrants along with their returns" related to a specified incident. You state that copies of the affidavits, arrest warrants, and search warrants have been provided to the requestor, but claim that the some of the information contained in the returns is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted executed officer's returns are governed by section 552.022 of the Government Code, which provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, if the submitted returns have been filed with the court, they must be released to the requestor, unless they are confidential under other law. Although you raise section 552.108 for this information, we note that this section is a discretionary exception to disclosure under the Act that does not constitute "other law" for purposes of section 552.022(a)(17). Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the returns that have been filed with the court are not excepted under section 552.108 of the Government Code, and must be released to the requestor.

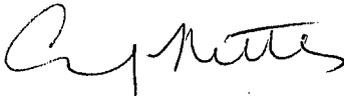
However, if the submitted returns have not been filed with the court, section 552.022 is inapplicable, and we will address your arguments. You claim that the remaining information in Exhibit B is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts “[i]nformation 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 inform us that the information you have marked relates to a pending criminal case. Based on your representation, we determine that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co.*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Accordingly, if the submitted returns have been filed with the court, they must be released to the requestor pursuant to section 552.022(a)(17) of the Government Code. To the extent the returns have not been filed with the court, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 355268

Enc. Submitted documents

c: Requestor  
(w/o enclosures)