



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2009

Mr. R. Kinley Hegglund, Jr.
Assistant City Attorney II
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-13239

Dear Mr. Hegglund:

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# 360399 (City ID No. 227).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified incident. You state that you have released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a document filed with a court, which is expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under "other law." You claim the court-filed document is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the court-filed document, which we have marked, under section 552.108 of the Government Code. We note that although you also raise section 552.130 of the Government Code, which is "other law" for purposes of section 552.022, the court-filed document does not contain any information covered by this exception.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108(a)(1) 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). We note that the submitted information includes a statutory warning and notice of suspension. Because copies of these documents have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the department may not withhold these documents under section 552.108(a)(1). You state, and provide an affidavit confirming, that the remaining information relates to an open and pending criminal case. Based upon your representation, the submitted affidavit, and our review, 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information

However, 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 the statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1).¹ We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the marked court-filed document must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of the statutory warning, notice of suspension, and basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

¹As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the remaining information.

²We note that the information being released contains confidential information to which the requestor has a right of access. *See Gov’t Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the department receives another request for this same information from a different requestor, then the department should again seek a decision from this office.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 360399

Enc. Submitted documents

cc: Requestor
(w/o enclosures)