



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2009

Ms. Vivian J. Harvey  
Assistant County Attorney  
100 East Tyler Street  
Athens, Texas 75751

OR2009-13761

Dear Ms. Harvey:

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# 356883.

The Henderson County Sheriff's Office (the "sheriff") received a request for a specific incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 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 information we have marked under 552.022(a)(17) of the Government Code may not be withheld under section 552.108. We note, that while you also raise section 552.101 in conjunction with common-law privacy for the court-filed documents, information that has been filed with a

court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). We note that the court-filed information contains information subject to section 552.130 of the Government Code.<sup>1</sup> As section 552.130 constitutes “other law” for the purposes of section 552.022, we will consider this exception for the information subject to 552.022. We will also consider your claim under section 552.108 for the information that is not subject to section 552.022.

Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas driver’s license number we have marked pursuant to section 552.130.

We now address your claim for the remaining information not subject to section 552.022(a)(17). Section 552.108 of the Government Code provides in part:

(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; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(a)(1), (2). Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information pertaining to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records pertaining to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov’t Code* §§ 552.108(a)(2), .301(e)(1)(A).

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

You state that the remaining information relates to an ongoing criminal investigation. Based upon your 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.*, 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is generally applicable to the submitted information.

We note, however, 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; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). With the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the information subject to section 552.022(a)(17) and basic information, which must be released, the sheriff may withhold the submitted report under section 552.108(a)(1). The sheriff must withhold the information we have marked under section 552.130. The remaining information must be released.<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.<sup>3</sup>

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

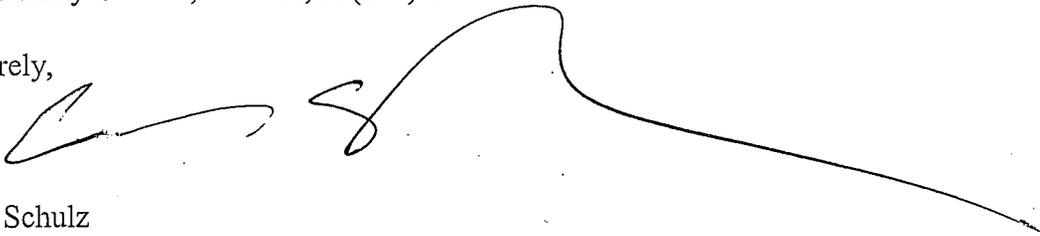
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<sup>2</sup> The requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a): Because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

<sup>3</sup> We note the remaining information contains a partial 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.

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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal line extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 356883

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)