



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street Third Floor
Fort Worth, Texas 76102

OR2009-14733

Dear Mr. Phillips:

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# 358530 (PIR Nos. 4890-09 and 4891-09).

The City of Fort Worth and the Fort Worth Police Department (collectively the "city") received requests from two requestors for information relating to an incident at a specific address on a specified date, including squad car video, radio traffic, and records of 911 calls. You do not indicate that the city was in possession of any responsive squad car videos when it received these requests.¹ You have submitted information that the city seeks to withhold under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.²

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note that one of the submitted recordings of 911 calls indicates that portions of the recording have been redacted. In this instance, the redactions do not prevent this office from ruling on the public availability of the recording. In the future, however, the city should refrain from redacting any information submitted to this office in connection with a request for a ruling under the Act, unless the information is the subject of a previous determination issued under section 552.301(a) of the Government Code or a social security number that the city is authorized to redact under section 552.147 of the Government Code without requesting a

Section 552.108 of the Government Code 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 inform us, and have provided an affidavit from the police department stating, that the submitted information is related to a pending criminal investigation. Based on this representation, we conclude that the city may withhold the recordings of 911 calls and police radio traffic on the submitted CD’s under section 552.108(a)(1). *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).

We note that the rest of the submitted information is contained in a computer-assisted dispatch (“CAD”) report. 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; Open Records Decision No. 127 (1976). In Open Records Decision No. 649 (1996), this office concluded that information contained in a CAD report is substantially the same as basic information and thus is not excepted from disclosure under section 552.108. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (no qualitative difference between information contained in police dispatch records or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*). We therefore conclude that the city may not withhold any of the information in the submitted CAD report under section 552.108 of the Government Code.

We also note that the CAD report contains Texas driver’s license and motor vehicle information.³ Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130(a)(1)-(2). We have marked the information in the CAD report that the city must withhold under section 552.130.

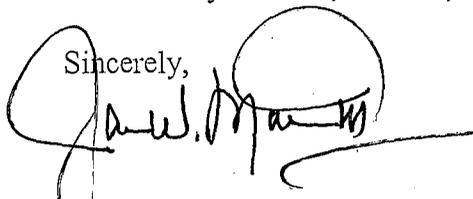
In summary: (1) the recordings of 911 calls and police radio traffic on the submitted CD’s may be withheld under section 552.108(a)(1) of the Government Code; and (2) the marked Texas driver’s license and motor vehicle information in the submitted CAD report must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a large circular flourish above the first name and a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 358530

Enc: Submitted information

c: Requestors
(w/o enclosures)