



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Mr. Hyattye O. Simmons
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2009-17100

Dear Mr. Simmons:

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# 363108 (DART ORR # 6827).

The Dallas Area Rapid Transit ("DART") received a request for the following information related to a specified accident: 1) copies of all photographs taken; 2) names and present duty assignments of every officer who assisted in the investigation; 3) names, addresses, and telephone numbers of all known witnesses; 4) a copy of any witness statements taken by the investigating officers; 5) copies of any field notes, file notes, field sketches, distance measurements and other pertinent scene data, along with a certified copy of the accident report; 6) a copy of any scaled diagram or reconstruction; and 7) a copy of any investigative videotape. You state DART has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note the documents submitted as Attachment B-2 are not responsive to the instant request. The request specifically seeks the aforementioned categories of information. The documents in Attachment B-2 do not fall into any of the seven specified categories. This decision does not address the public availability of the non-responsive information, and DART need not release Attachment B-2 in response to this request.

Section 552.108(a)(1) 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 state, and provide a representation from the DART police department asserting, that report number DC08006732 is the basis of a pending criminal investigation by DART police. Based upon these representations and our review, we find the release of this report 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. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We therefore conclude section 552.108(a)(1) is generally applicable to report number DC08006732.

Section 552.108, however, 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* 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, which must be released, the department may withhold report number DC08006732 under section 552.108(a)(1) of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of report number DC08006732.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 363108

Enc. Submitted documents

c: Requestor
(w/o enclosures)