



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 5, 2010

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hagar & Smith, LLP
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2010-00094

Dear Mr. Hager:

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# 366290.

The City of Seagoville (the "city"), which you represent, received a request for the following three categories of information related to a February 20, 2009 accident involving two named individuals: (1) witness statements taken during the investigation, (2) documents regarding the investigation, and (3) accident or incident reports related to the incident. You state the city does not have information responsive to the first category of the request.¹ You also state the city has released the Texas Peace Officer's Crash Report and the "Public Information Report" portion of the incident report.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

²We assume the "Public Information Report" information you released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted from disclosure under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You state the submitted information constitutes the city's police department's investigation of the accident at issue. You state this investigation resulted in an arrest and that the case was forwarded to the Kaufman County District Attorney's office for prosecution. We therefore determine the submitted information consists of the police department's completed investigation into this matter, and is subject to section 552.022(a)(1). Thus, the city may only withhold this information if it is excepted from disclosure under section 552.108 or expressly confidential under "other law." Although you assert this information is excepted under section 552.103 of the Government Code, this section is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, section 552.103 is not "other law" that makes information confidential for purposes of section 552.022. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code. However, sections 552.101 and 552.130 are mandatory exceptions to disclosure, and thus are "other law" for purposes of section 552.022. Therefore, we will consider your claims under sections 552.101, 552.108, and 552.130 of the Government Code for the submitted 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 governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted documents "constitute the investigation of an open and active criminal case which has been filed with the District Attorney's office for prosecution." Thus, based on your representations and our review, we conclude release of the submitted 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) (court delineates law enforcement interests that are present in active cases). Thus, with the exception of basic information which you state has been released, the city may withhold the submitted information under section 552.108(a)(1). As our ruling is dispositive, we need not address your remaining exceptions to disclosure.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 366290

Enc. Submitted documents

cc: Requestor
(w/o enclosures)