



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2010

Ms. Sue Koriath
Assistant Criminal District Attorney
Kaufman County Criminal District Attorney's Office
100 West Mulberry
Kaufman, Texas 75142

OR2010-02860

Dear Ms. Koriath:

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# 371332.

The Kaufman County Criminal District Attorney's Office (the "district attorney") received a request for information relating to a specified case. You ask whether the information submitted as Exhibit 8 is subject to disclosure under the Act. You state that most of the information submitted as Exhibit 5 has been released to the requestor. You claim that the rest of the information submitted as Exhibits 2 through 7 is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered your arguments and reviewed the information you submitted.

Initially, we address your representations with regard to Exhibit 8. You state that Exhibit 8 is available to, but was not created and is not maintained by, the district attorney's office. You indicate, and Exhibit 8 itself reflects, that the information in question is maintained for a justice of the peace court, which is part of the judiciary. We note that the Act is applicable to information "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open

Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). Based on your representations and our review of the information in question, we find that Exhibit 8 is maintained for the judiciary. We therefore conclude that Exhibit 8 is not subject to the Act and need not be released in response to this request for information.¹

We note that section 552.022 of the Government Code is applicable to other information you have submitted. Section 552.022(a)(17) 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). You state that the information submitted as Exhibit 2 consists of court documents. We note that the information submitted as Exhibit 3 has been filed with a court. Thus, Exhibits 2 and 3 are subject to disclosure under section 552.022(a)(17). Although you seek to withhold Exhibits 2 and 3 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 in Exhibits 2 and 3 may not be withheld under section 552.108.

We note Exhibit 3 contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). Section 552.130 is a confidentiality provision for the purposes of section 552.022(a)(17). The Texas driver's license number we have marked in Exhibit 3 must be withheld under section 552.130.² The rest of the information in Exhibits 2 and 3 must be released pursuant to section 552.022(a)(17).

Next, we address your claim under section 552.108 of the Government Code for the rest of the information at issue. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹We note that records of the judiciary also may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

prosecution of crime . . . if . . . 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)(2). 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 seek to withhold the information in Exhibit 4, the remaining information in Exhibit 5, and the information in Exhibits 6 and 7 under section 552.108(a)(2). You state that the information in question is related to a case that was dismissed and did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable in this instance.

We note, and you acknowledge, 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). *See* 531 S.W.2d at 186-88. The district attorney must release basic offense and arrest information, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The remaining information in Exhibits 4 through 7 may be withheld under section 552.108(a)(2). We note that the district attorney has discretion under section 552.108 to release additional information that is not otherwise made confidential by law. *See* Gov’t Code § 552.007; ORD 177 at 3 (statutory predecessor to Gov’t Code § 552.108 did not prohibit release of information).

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.³ Gov’t Code § 552.147(a). The district attorney may withhold the arrested person’s social security number under section 552.147.

In summary: (1) Exhibit 8 is not subject to the Act and need not be released in response to this request for information; (2) except for the marked Texas driver’s license number that must be withheld under section 552.130 of the Government Code, Exhibits 2 and 3 must be released pursuant to section 552.022(a)(17) of the Government Code; (3) except for the basic offense and arrest information that must be released under section 552.108(c), the district attorney may withhold Exhibit 4, the remaining information in Exhibit 5, and Exhibits 6 and 7 under section 552.108(a)(2) of the Government Code; and (4) the arrested person’s social security number may be withheld under section 552.147 of the Government Code. As

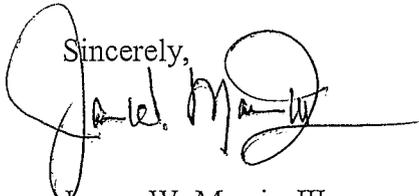
³We note that section 552.147(b) authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

we are able to make these determinations, we need not address your other arguments against 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with large loops and a long horizontal stroke extending to the right.

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

JWM/cc

Ref: ID# 371332

Enc: Submitted documents

c: Requestor
(w/o enclosures)