



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2010

Mr. Hardy Burke
Assistant District Attorney
Denton County Criminal District Attorney
Counsel to the Sheriff
127 North Woodrow Lane
Denton, Texas 76205

OR2010-03924

Dear Mr. Burke:

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# 373307.

The Denton County Sheriff's Office (the "sheriff") received a request for the personnel files of two named officers. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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

¹ Although you also raise section 552.101 of the Government Code, you do not present any corresponding arguments against disclosure. Therefore, we assume the sheriff has withdrawn any assertions under that section.

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes a court-filed document that is subject to section 552.022(a)(17). Therefore, the sheriff may only withhold this information if it is confidential under "other law." Although the sheriff raises sections 552.103 and 552.108 of the Government Code for this information, sections 552.103 and 552.108 are discretionary exceptions that protect 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold the information subject to section 552.022 under sections 552.103 and 552.108. However, we note some of the information subject to section 552.022 may be subject to section 552.117 of the Government Code.² Because this section constitutes "other law" for purposes of section 552.022, we consider its applicability to the information at issue.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Accordingly, the sheriff must withhold the information subject to section 552.022 that we have marked under section 552.117(a)(2) of the Government Code. The remaining information subject to section 552.022 must be released.

Next, we address your assertion that the remaining information not subject to section 552.022 is subject to section 552.108 of the Government Code. Section 552.108 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 provide documentation showing, that the submitted personnel files pertain to two officers who are involved in a pending criminal prosecution against the requestor's law firm's client. You state that the sheriff objects to the release of these personnel files, as such a release could be detrimental to the ongoing criminal

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

prosecution. Based on your representations and our review of the submitted documents, we conclude section 552.108(a)(1) is applicable in this instance. *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). Accordingly, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The sheriff must release the remaining information that is subject to section 552.022(a)(17) of the Government Code. The sheriff may withhold the remaining information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 373307

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we do not address your remaining argument for this information.