



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2010

Ms. Martha T. Williams
Olson & Olson, LLP
2727 Allen Parkway
Houston, Texas 77019

OR2010-05622

Dear Ms. Williams:

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# 376528.

The Alvin Police Department (the "department"), which you represent, received a request for all incident and offense reports concerning a specified incident, and any other incidents relating to six charges, to include any search or arrest warrants. You state that you have released or will be releasing "front page" information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), .301(e)(1)(D). The department has redacted a social security number. Section 552.147(b) of the Government Code 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. *See id.* § 552.147. In addition, the department has redacted a Texas driver's license number. Redacting of Texas driver's license numbers is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision 684 (2009), which authorizes the withholding of ten categories of

information, including Texas driver's license numbers under section 552.130 of the Government Code. However, you do not assert, nor does our review of our records indicate, that the department is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Because we are unable to discern the nature of the remaining redacted information, the department has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Thus, we conclude that the department must release the remaining redacted information, which we have marked, to the requestor. If you believe the marked information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Next, we note the submitted information includes a search warrant signed by a magistrate. Section 552.022 of the Government Code 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). Although the department seeks to withhold this information under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Open Records Decision* Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *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). As such, sections 552.103 and 552.108 are not other laws that make information expressly confidential for purposes of section 552.022(a)(17). Therefore, the department may not withhold the search warrant under sections 552.103 and 552.108 of the Government Code. As you raise no additional exceptions for the search warrant, it must be released to the requestor.

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 claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an active criminal investigation. Based on this representation, we conclude the release of the remaining 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. 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, section 552.108(a)(1) is applicable to the remaining information.

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).

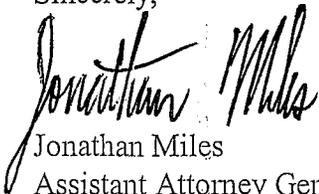
Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. See 531 S.W.2d at 186-88. Therefore, with the exception of basic information, which you state you have released or will release, and the search warrant subject to 552.022(a)(17), the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the department must release the search warrant we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information and the redacted information we have marked, the department may withhold the remaining submitted information 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 376528

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling under section 552.108 is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).