



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2010

Ms. Sally Jo Hahn
Attorney for Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2010-07050

Dear Ms. Hahn:

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# 384612.

The Texas Parks & Wildlife Department (the "department") received a request for information pertaining to a specified boating accident. You state that the department has released some of the requested information to the requestor. You claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains documents filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See Gov't Code § 552.022(a)(17)*. Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108)*. Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. As no other

exceptions against their disclosure are raised, the marked court-filed documents 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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the submitted information includes a notice of suspension. Because a copy of this document, which we have marked, has been provided to the arrestee, we find that its release will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the department may not withhold the notice of suspension under section 552.108(a)(1). You state that the remaining information relates to an open and pending criminal investigation. Based upon your representation and our review, we conclude that 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. 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

As you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the notice of suspension and basic information, the department may withhold the remaining information under section 552.108(a)(1).

In summary, the department must release the marked court-filed documents subject to section 552.022(a)(17) of the Government Code. With the exception of the notice of suspension and basic information, the department may withhold the remaining 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 384612

Enc. Submitted documents

c: Requestor
(w/o enclosures)