



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2010

Mr. Bobby Sanders  
Chief Deputy  
Upshur County Sheriff's Office  
405 North Titus Street  
Gilmer, Texas 75644

OR2010-07789A

Dear Mr. Sanders:

This office issued Open Records Letter No. 2010-07789 (2010) on May 28, 2010. In that ruling we found that, because the envelope containing your request for a ruling from our office was not postmarked, you failed to comply with the requirements of section 552.301(b) of the Government Code. Subsequent to that ruling, you submitted a sworn affidavit asserting your request for a ruling was mailed on March 23, 2010, and thus was timely submitted under section 552.301(b). You now ask this office to reconsider Open Records Letter No. 2010-07789 in light of this representation. We have considered your request and will reconsider the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 28, 2010. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 389470.

The Upshur County Sheriff's Office (the "sheriff") received a request for the police report, probable cause affidavit, and personnel disciplinary records relating to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by a representative of the requestor. *See id.* § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes a court-filed document subject to section 552.022(a)(17) of the Government Code. 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. *Id.* § 552.022(a)(17). Although you seek to withhold this court-filed document 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 id.* § 552.007; *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 Gov't Code § 552.103), 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, sections 552.103 and 552.108 are not other laws that makes information expressly confidential for the purposes of section 552.022(a)(17), and the court-filed document at issue, may not be withheld under those sections. As you raise no other exception to the disclosure of this document, it must be released. We will now consider your arguments against the disclosure of the remaining submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) 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)(1), (2). The protections offered by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information that pertains to a criminal investigation or prosecution that is currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to a criminal investigation or prosecution that has concluded in final results other than a criminal conviction or deferred adjudication. 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You state the submitted information relates to a pending criminal prosecution. Thus, section 552.108(a)(1) is the proper exception to raise in this instance. Based upon your

representation, we conclude the 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) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is applicable to the submitted information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. See 536 S.W.2d at 559; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

In summary, the marked court-filed document must be released. Apart from basic information, the sheriff 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](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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/tp

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)