



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2010

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2010-10473

Dear Ms. Lentz:

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# 386626.

The Williamson County Sheriff's Office (the "sheriff") received a request for the incident report, warrant statements, and evidence report/record related to the arrest of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor does not seek access to any social security, Texas driver's license, Texas license plate, or vehicle identification numbers contained in the submitted information. Thus, to the extent that the submitted information contains those types of information, they are not responsive to this request. This decision does not address the public availability of the submitted information that is not responsive to this request, and the sheriff need not release such information in response to the request.

Next, we note the submitted information includes a search warrant that has been filed with a court. 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). Although you seek to withhold the search

warrant 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 section 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). However, you seek to withhold a portion of the search warrant under section 552.151 of the Government Code, which does constitute "other law" for the purposes of section 552.022 of the Government Code. Therefore, we will consider the applicability of that section to the submitted information.

We now turn to your arguments under section 552.108 for the information that is not subject to section 552.022. Section 552.108 of the Government Code provides in relevant 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;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code §552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. You state the information in Exhibit B relates to pending prosecutions by the Williamson County Attorney's Office and the Williamson County District Attorney's Office. You further state that release of the information in Exhibit B would interfere with the pending prosecutions. Upon review, we find that section 552.108(a)(1) is applicable to the remaining information Exhibit B. *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).

Section 552.108 does not except 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 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 basic information, the sheriff may withhold the remaining information in Exhibit B under section 552.108(a)(1).

You seek to withhold the names of undercover narcotics officers from the search warrant and the basic information under section 552.151 of the Government Code. This section provides in part:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.151. You represent to this office that release of the names of the undercover narcotics officers would subject the officers to a "substantial threat of physical harm." Based on your representation, we find that the sheriff has demonstrated that release of the information at issue would subject the officers to a substantial threat of physical harm. We therefore conclude that the sheriff must withhold the officers' names, which you have marked, under section 552.151 of the Government Code.

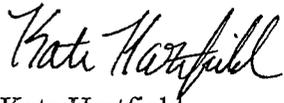
In summary, with the exception of the search warrant and basic information, the sheriff may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The sheriff must withhold the names of the undercover narcotics officers, which you have marked, from the search warrant and the basic information under section 552.151 of the Government Code. As our ruling is dispositive, we need not address your remaining 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 cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 386626

Enc. Submitted documents

c: Requestor
(w/o enclosures)