



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2010

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2010-11547

Dear Mr. Scott:

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# 388793 (City ID No. 165).

The City of Wichita Falls (the "city") received a request for police reports related to several specified incidents. You claim that the 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes a magistrate's warning that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this document under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects 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 Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for purposes of section 552.022(a)(17). As you

raise no further exceptions against the disclosure of the magistrate's warning, it must be released.

Section 552.108 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 must reasonably explain how and why section 552.108 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 have submitted correspondence from the city's police department which states that the information related to report numbers 09-110006 and 10-050709 pertain to open criminal investigations. You have also submitted correspondence from the Wichita County District Attorney's Office which states that the information related to report number 09-110007 pertains to a pending criminal prosecution. Based on these representations and our review, we conclude that section 552.108(a)(1) is applicable to the information related to report numbers 09-110006, 09-110007, and 10-050709. *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).

We note 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 front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of each offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of report numbers 09-110006, 09-110007, and 10-050709 under section 552.108(a)(1).

In summary, the city must release the magistrate's warning pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold report numbers 09-110006, 09-110007, and 10-050709 pursuant to section 552.108(a)(1) of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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 "Jennifer Burnett". The signature is written in black ink and is positioned to the left of the typed name.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 388793

Enc. Submitted documents

c: Requestor
(w/o enclosures)