



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-12161

Dear Mr. Weir:

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# 394905 (COSA File No. 2010-6114).

The San Antonio Police Department (the "department") received a request for information relating to a fatal traffic accident. You state that some of the requested information either has been or will be released. You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note that some of the submitted information was created subsequent to the date of the department's receipt of the instant request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.¹ Thus, the information that did not exist when the department received the instant request is not responsive to the request. This decision does not address the public availability of that information, which we have marked, and it need not be released in response to this request.

¹See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We next note that the submitted information includes a court document. Section 552.022(a)(17) 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). Thus, the court document we have marked is subject to disclosure under section 552.022(a)(17). Although you seek to withhold the information at issue 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 Gov't Code § 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). Therefore, the marked court document may not be withheld under section 552.108.

We note that the court document contains Texas motor vehicle information. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state.² *See* Gov't Code § 552.130(a)(2). This section is a confidentiality provision for the purposes of section 552.022(a)(17). The Texas motor vehicle information we have marked must be withheld under section 552.130.³ The remaining information in the court document must be released pursuant to section 552.022(a)(17).

Next, we address your claim under section 552.108 of the Government Code for the rest of the information at issue. Section 552.108(a)(1) 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 state that the release of the remaining information would interfere with an investigation of an open case. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to the remaining information. *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).

²This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.

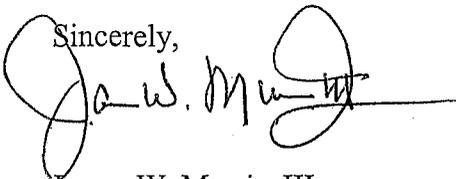
We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the 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 department may withhold the remaining information at issue under section 552.108(a)(1).

In summary: (1) except for the marked Texas motor vehicle information, which must be withheld under section 552.130 of the Government Code, the marked court document must be released pursuant to section 552.022(a)(17) of the Government Code; and (2) the remaining information at issue may be withheld under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).

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 black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 394905

Enc: Submitted information

c: Requestor

(w/o enclosures)