



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2010

Mr. Thomas A. Gwosdz
City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2010-12944

Dear Mr. Gwosdz:

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# 391487.

The City of Victoria (the "city") received a request for information involving a named individual and a specified time interval.¹ You inform us that some of the requested information either has been or will be released. You state that some of the requested information is the subject of a previous open records letter ruling. You also claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We also have considered the comments we received from the requestor.²

We first note that some of the submitted information is published on a Victoria newspaper's website. Thus, the city may have previously released some of the submitted information to the public. The Act does not permit selective disclosure of information to the public. *See*

¹You inform us that the request was subsequently clarified. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Although you seek to withhold the submitted information under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 neither expressly prohibit the release of information to the public nor make information confidential under law. Therefore, to the extent that the city has previously released any of the submitted information to a member of the public, the city may not now withhold any such information from the present requestor under section 552.103 or section 552.108. To the extent that the city has not previously released this information, we will address your arguments against its disclosure.

You inform us that some of the submitted information relating to case number 2009-00065179 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-03469 (2009). We concluded that the city may withhold the information that was at issue in the previous ruling under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the city may continue to rely on Open Records Letter No. 2010-03469 with respect to the information relating to case number 2009-00065179 that is encompassed by the previous ruling.³ *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

To the extent that the submitted information is not encompassed by the previous ruling, we address your claim under section 552.108 of the Government Code. 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

³As we are able to make this determination, we need not address the city's present claims for the information encompassed by the previous ruling.

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 submitted information, which pertains to case numbers 2009-00063989 and 2009-00065179, is related to pending criminal cases. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable in this instance. *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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The city may withhold the rest of the submitted information under section 552.108(a)(1).

In summary: (1) to the extent that the city has previously released any of the submitted information to a member of the public, the city may not now withhold any such information from the present requestor under section 552.103 or section 552.108 of the Government Code; (2) the city may continue to rely on our ruling under section 552.108 in Open Records Letter No. 2010-03469 with respect to the information relating to case number 2009-00065179 that is encompassed by the previous ruling; and (3) to the extent that it is not encompassed by the previous ruling, the submitted information may be withheld under section 552.108(a)(1), except for the basic information that must be released under section 552.108(c).⁴

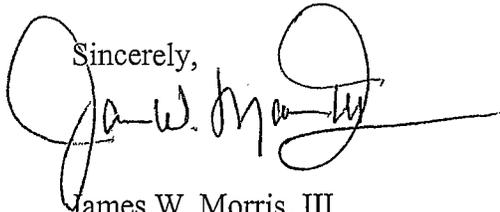
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁴As we are able to make these determinations, we need not address your claim under section 552.103 of the Government Code, except to note that section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

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

JWM/em

Ref: ID# 391487

Enc: Submitted information

c: Requestor
(w/o enclosures)