



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2010

Mr. Michael M. Kelly
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite # 301
Victoria, Texas 77901

OR2010-13364

Dear Mr. Kelly:

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# 392499.

The Victoria County Criminal District Attorney (the "district attorney") received three requests from two different requestors for information pertaining to a named individual and information pertaining to a specified incident involving the named individual. You claim 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.

Initially, in your brief to this office, you represented some information in Exhibit D-1 would be released to the public. We note portions of Exhibit D-1 have now been released as they are published on a Victoria newspaper's website. The Act does not permit selective disclosure of information to the public. *See id.* §§ 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). Although you seek to withhold Exhibit D-1 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. Open Records Decision Nos. 665 at 2 n.5

(2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 neither expressly prohibits the release of information to the public nor makes information confidential under law. Therefore, the district attorney may not now withhold any previously voluntarily released portion of Exhibit D-1 from the present requestors under section 552.108.

Section 552.108(a) of the Government Code provides the following:

(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;
- (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). Section 552.108(a)(1) is mutually exclusive of section 552.108(a)(2). Section 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. You state Exhibit D-2 pertains to an ongoing investigation that may be filed for prosecution in the future. You also state Exhibit D-1 pertains to a case that was dismissed. However, you assert the statute of limitations has not run and the criminal investigation of this case continues. Therefore, we understand you to claim section 552.108(a)(1) is applicable to Exhibits D-1 and D-2 in this instance. 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). You indicate release of this information would negatively affect the district attorney's plea bargaining position and potentially place material witnesses in jeopardy. Thus, we understand you to claim release of this information would interfere with the detection, investigation or prosecution of a crime. Accordingly, we conclude section 552.108(a)(1) is applicable to Exhibits D-1 and D-2. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information

refers to the information held to be public in *Houston Chronicle*, and includes, among other items, the identification and description of the complainant and a detailed description of the offense. 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 the basic information, the district attorney may withhold Exhibit D-2 and the remaining information in Exhibit D-1 under section 552.108(a)(1).¹

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 392499

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.