



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

Ms. Janet I. Monteros
Assistant County Attorney
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-16530

Dear Ms. Monteros:

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# 398519 (CA OP-10-331).

The El Paso County Sheriff's Office (the "sheriff") received a request for information pertaining to case number 10-0800283. You state the sheriff will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information relates to the sheriff's investigation into the criminal incident related to case number 10-0800283. This investigation resulted

in an arrest, and the case was forwarded to the El Paso County District Attorney's Office (the "district attorney") for prosecution. We therefore determine the submitted information consists of the sheriff's completed investigation into this matter, and is subject to section 552.022(a)(1). Thus, the sheriff may only withhold this information if it is excepted from disclosure under section 552.108 or expressly confidential under "other law." Although you assert this information is excepted under section 552.103 of the Government Code, this section is a discretionary exception to public disclosure that protects 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). As such, section 552.103 is not "other law" that makes information confidential for purposes of section 552.022. Therefore, none of the submitted information may be withheld under section 552.103 of the Government Code. However, we will consider your claims under section 552.108 of the Government Code for the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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). You marked portions of the submitted information under sections 552.108(a)(1) and 552.108(a)(2). We note section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Section 552.108(a)(1) generally 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. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A). Section 552.108 may be invoked by the proper custodian of information relating to an

investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983).

In this instance, you provide a representation from the district attorney stating the submitted information pertains to a pending prosecution, and stating release of this information at this time would interfere with the case's prosecution. You marked the victim's telephone number under section 552.108(a)(2) of the Government Code. However, based on the representation that the district attorney's prosecution is pending, this case has not concluded in a final result. Consequently, you failed demonstrate the applicability of section 552.108(a)(2) to the marked telephone number, and it may not be withheld in this instance. However, based on the district attorney's representation, we conclude release of most of the information you marked under section 552.108(a)(1) would interfere with the detection, investigation, or prosecution of crime. 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note you marked a *Miranda* warning that was provided to the individual who was arrested under section 552.108(a)(1). Because this document, which we have marked, has been provided to the arrested individual, we find its release will not interfere with the detection, investigation, or prosecution of crime. Thus, this document may not be withheld under section 552.108(a)(1).

Additionally, 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). Basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense and certain details about an arrestee, even if the information does not literally appear on the front page of an offense or arrest report. See 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You marked the entire narrative portion of the report under section 552.108(a)(1). Upon review, however, the unmarked information does not contain information sufficient to satisfy the requirement that a "detailed description of the offense" be released as basic information. See ORD 127. Accordingly, we determine the sheriff must release the required information about the arrestee and a sufficient portion of the narrative to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. Thus, with the exception of the *Miranda* warning we marked and the basic information, the sheriff may withhold the information you marked under section 552.108(a)(1) of the Government Code. The *Miranda* warning and basic information must be released.¹

¹The remaining information includes the victim's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Thus, the social security number in the remaining information may be withheld under section 552.147 of the Government Code.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 398519

Enc. Submitted documents

c: Requestor
(w/o enclosures)