



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2010

Ms. Catherine Zellers
City Attorney's Office
City of Weatherford
P.O. Box 255
Weatherford, Texas 76086

OR2010-17994

Dear Ms. Zellers:

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# 401598.

The Weatherford Police Department (the "department") received a request for all police reports a named individual made against the requestor during a specified time period. 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, you inform us the information in Exhibits B, C, and D was the subject of a previous request for information, in response to which this office issued Open Records Letter No. OR2010-02453 (2010). In Open Records Letter No. OR2010-02453, we ruled the department may withhold a portion of Exhibit D under section 552.108(a)(1) of the Government Code and the department may withhold portions of Exhibits B and C under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, we conclude the department must continue to withhold or release the information in Exhibits B, C, and D in accordance with Open Records Letter No. OR2010-02453.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

¹As our determination is dispositive for the information subject to the previous determination in Open Records Letter No. OR2010-02453, we need not address your arguments against its disclosure.

You claim the information you have marked in Exhibit F is excepted under section 552.108(a)(1) 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 information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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 state Exhibit F relates to a pending criminal prosecution with the Parker County Attorney’s Office (the “county attorney”). You further state the county attorney objects to the release of Exhibit F based on its law enforcement interest in the case. Based upon your representation and our review, we conclude the release of the marked portion of Exhibit F 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. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests present in active cases). Thus, the department may withhold the information you have marked in Exhibit F under section 552.108(a)(1).

You raise section 552.108(a)(4) for the remaining information in Exhibit F. This section excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that . . . is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or . . . represents the mental impressions or legal reasoning of an attorney representing the state.” Gov’t Code § 552.108(a)(4)(A)-(B). Generally, a governmental body claiming section 552.108(a)(4) must reasonably explain how the requested information reflects the prosecutor’s mental impressions or legal reasoning. *See id.* 552.301(e)(1)(a); *see also Pruitt*, 551 S.W.2d 706. You assert the information at issue documents the mental impressions or legal reasoning of prosecutors. However, we note Exhibit F consists of an incident report prepared by the department, and you have not adequately explained how this information reflects the mental impressions of a prosecutor. Therefore, we conclude you may not withhold any of the remaining information under section 552.108(a)(4).

Next, you claim Exhibit E is excepted under section 552.108(a)(2), which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit E pertains to a criminal investigation by the department that did not result in a conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is generally applicable to Exhibit E.

However, as you acknowledge, 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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, the department may withhold Exhibit E under section 552.108(a)(2) of the Government Code.

In summary, the department must rely on Open Records Letter No. 2010-02453 as a previous determination and withhold or release the information in Exhibits B, C, and D in accordance with that prior ruling. The department may withhold the information you have marked in Exhibit F under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold Exhibit E under section 552.108(a)(2) of the Government Code. The department must release the remaining information.²

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

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²We note the information being released contains the requestor's driver's license number, to which he has a special right of access. *See* Gov't Code § 552.023(a). Accordingly, if the department receives another request for the information from an individual other than the requestor, the department is authorized to withhold the driver's license number under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 684 (2009) (previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting a ruling from this office).

Ref: ID# 401598

Enc. Submitted documents

c: Requestor
(w/o enclosures)