



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2010

Ms. Bridget G. Bateman
Assistant District Attorney
Henderson County District Attorney's Office
109 West Corsicana, Suite 103
Athens, Texas 75751

OR2010-18060

Dear Ms. Bateman:

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# 406486.

The Henderson County Sheriff's Office (the "sheriff") received a request for records pertaining to a specified homicide case, specified warrants, and all incident and arrest reports pertaining to a specified address during a specific time period. You indicate the sheriff is releasing some of the requested information, including the requested arrest warrant. You claim that 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, we note that the submitted information includes search warrants filed with a court, which are expressly public under section 552.022(a)(17) of the Government Code. *See Gov't Code § 552.022(a)(17)*. Such information must be released unless it is expressly confidential under "other law." You claim the court-filed documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108)*. Therefore, the sheriff may not withhold the court-filed documents, which

we have marked, under section 552.108 of the Government Code. As you raise no further exceptions to their disclosure, the marked search warrants must be released.

We now address your argument under section 552.108 of the Government Code for the information that is not subject to section 552.022. Section 552.108 of the Government Code exempts from public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception 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 remaining information relates to a pending criminal case. Based upon your representation and our review, we conclude that the release of the remaining information 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 that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, 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*. *See Houston Chronicle*, 531 S.W.2d at 186-88. The sheriff must release basic information, 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*). Thus, with the exception of basic information, which must be released, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the court-filed documents we have marked must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the sheriff may withhold the remaining information under section 552.108(a)(1) 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,

A handwritten signature in cursive script that reads "Laura Ream Lemus".

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tf

Ref: ID# 406486

Enc. Submitted documents

c: Requestor
(w/o enclosures)