



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2010-18088

Dear Ms. Sangsvang:

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# 401763 (PIR No. W003592).

The City of Fort Worth (the "city") received a request for police and 911 call reports relating to a specified case. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

We first note the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302;

¹You state that social security numbers and Texas motor vehicle record information have been redacted from the submitted records pursuant to section 552.147(b) of the Government Code and previous determinations issued to the city under section 552.130 of the Government Code. *See* Gov't Code §§ 552.147, .130; Open Records Decision No. 673 (2001) (previous determinations).

Simmons v. Kuzmich, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us the city received the instant request for information on September 9, 2010; therefore, the city's ten-business-day deadline under section 552.301(b) was September 23. The city requested this decision by United States mail meter-marked September 24. Thus, the city did not comply with section 552.301, and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city claims section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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). In this instance, however, the Tarrant County District Attorney's Office (the "district attorney") asserts an interest in the information at issue under sections 552.103 and 552.108 of the Government Code. We note the interests under these exceptions of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). Therefore, we will consider whether the city may withhold the information at issue on behalf of the district attorney under sections 552.103 and 552.108. We also will consider the city's claim under section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure under section 552.302.

Section 552.108 of the Government Code 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). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain 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). The city has provided the affidavit of a prosecutor in the district attorney's office. The affidavit states the submitted information pertains to a criminal prosecution in which the defendant was convicted. The affidavit explains the conviction was affirmed on appeal, but the defendant has filed a petition for discretionary review, which remains pending in the Texas Court of Criminal Appeals. The affidavit contends release of the submitted information would interfere with the pending criminal case. Based on the affidavit, we conclude section 552.108(a)(1) is generally applicable to the submitted information. *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).

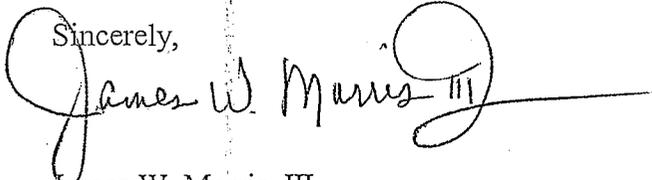
We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers

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 (1976) (summarizing types of information deemed public in *Houston Chronicle*). The city must release basic offense and arrest information, including a detailed description of the offense, 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 on behalf of the district attorney under section 552.108(a)(1) of the Government Code.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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal line extending to the right.

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

JWM/em

Ref: ID# 401763

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²As we are able to make this determination, we do not address sections 552.101 and 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).