



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2010

Ms. Natalie Banuelos
Messer, Campbell & Brady L.L.P.
For City of Lavon
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2010-18142

Dear Ms. Banuelos:

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# 401814.

The Lavon Police Department (the "department"), which you represent, received a request for all records or documents relating to a named individual involving any arrests made in the twelve months prior to the date of request. You claim that the submitted information is excepted from disclosure under sections 552.108, 552.111, 552.130, 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 includes a court-filed document that is subject to disclosure under section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the submitted court-filed document under section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold the court-filed document under section 552.108. As no other exceptions against disclosure of this document are raised, the court-filed document, which we have marked, must be released to the requestor.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. 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).

We note the submitted information includes a statutory warning and a notice of suspension. Because copies of the warning and notice have been provided to the arrestee, we find that their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the statutory warning or the notice of suspension, which we have marked for release, under section 552.108(a)(1).

You state, and provide an affidavit from an officer with the department confirming, that the remaining information relates to an open and pending criminal investigation. Based upon your representation, the submitted affidavit, 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., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the remaining information.

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*. *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 statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1).¹

In summary, the submitted court-filed document must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of the statutory warning, notice of suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

²We note the information being released contains confidential information to which the requestor has a right of access. *See* Gov’t Code § 552.023 (person or person’s representative has special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect person’s privacy interests). Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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, appearing to read 'Vanessa Burgess', with a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 401814

Enc. Submitted documents

c: Requestor
(w/o enclosures)