



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2010

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2010-18406

Dear Mr. Bilbie:

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# 402252.

The Harlingen Police Department (the "department") received a request for information related to a specified arrest. You state the department has released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a magistrate's warning, which we have marked, that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this document under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* 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, sections 552.103 and 552.108 are not other laws that make information expressly confidential for purposes of section 552.022(a)(17). In addition, we note that while you also raise section 552.101 in conjunction with common-law privacy for this document, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable

to court-filed document). Therefore, the magistrate's warning may not be withheld under sections 552.103, 552.108, and 552.101 in conjunction with common-law privacy. As you raise no further exceptions against the disclosure of the magistrate's warning, it must be released.

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: (1) 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 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 the remaining submitted information relates to a pending criminal prosecution. Based on this representation, we conclude that the release of the remaining submitted 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) of the Government Code is generally applicable to the remaining submitted information.

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). 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic information even if it does not literally appear on the front page of an offense or arrest report. *See* ORD 127 at 3-4. Thus, with the exception of basic information, which you state you have released, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.¹

In summary, the department must release the magistrate's warning we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state you have released, the remaining submitted information may be withheld pursuant to 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.

¹As our ruling is dispositive, we do not address your remaining arguments against disclosure for this information, except to note that basic information may generally not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 402252

Enc. Submitted documents

c: Requestor
(w/o enclosures)