



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2011

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-02352

Dear Mr. Phillips:

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# 410630 (PIR Nos. W5567, W5576, W5577, W5578, W5579, W5583, W5631, and W5678).

The City of Fort Worth (the "city") received eight requests for information pertaining to the arrest of a city police officer for an alleged sexual assault. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note the submitted information contains a search warrant that has been filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor

¹You state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code §§ 552.147 (b), 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the city may not withhold the submitted search warrant under section 552.108.

The submitted warrant includes a handwritten note by the judge of the 297th District Court of Tarrant County, Texas, dated December 13, 2010, stating, "The District Clerk is ordered to seal this Search Warrant . . . until further order of the Court." Thus, you assert the search warrant is excepted from disclosure under section 552.101 of the Government Code in conjunction with this court order. See Gov't Code § 552.101 (excepting from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision"); see also *id.* § 552.107(2) (information is excepted from release if court by order has prohibited its disclosure). However, section 552.022(b) of the Government Code provides as follows:

A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Id. § 552.022(b). Under section 552.022(b), a court may not order a governmental body to withhold from the public information encompassed by section 552.022(a) – unless that information is expressly made confidential under other law. *Id.* The court order sealing the search warrant does not find the warrant to be confidential under other law. Therefore, because the Act prohibits a court from ordering the city to withhold information subject to section 552.022(a), unless that information is expressly made confidential under other law, the city may not rely on the court order to withhold the search warrant. Accordingly, the city must release the search warrant, which we have marked, to the requestors to the extent it is responsive to their requests.

You assert the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure information 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state and have submitted an affidavit from the city's police department confirming the submitted information relates to a pending criminal investigation. Based on this representation, we conclude the release of this 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front-page offense and arrest information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

We note basic information includes the identity of the complainant and the home address of the arrestee. See ORD 127 at 3-4. Because the submitted information relates to an alleged sexual assault, the city would ordinarily be required to withhold the identity of the complainant from the public under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov't Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). However, the complainant is identified in the submitted information by a pseudonym. Therefore, none of the basic information is excepted from disclosure under section 552.101 in accordance with common-law privacy.

You assert the arrestee's address is excepted from disclosure under section 552.117 of the Government Code. See Gov't Code § 552.117(a)(2) (excepting from disclosure peace officer's home address and telephone number, social security number, and family member information, regardless whether an election under section 552.024 was made); see also Open Records Decision No. 622 (1994). However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted offense report consists of a law enforcement record, and you do not assert the city holds the information in an employment capacity. Accordingly, you have not established any of the basic information is excepted from disclosure under section 552.117.

Nevertheless, section 552.1175 of the Government Code may be applicable to the arrestee's address.³ Section 552.1175(b) provides the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the

²As we are able to resolve this under section 552.108, we do not address your other arguments to withhold this information.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

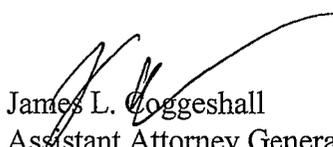
Gov't Code § 552.1175(b). Accordingly, the city must withhold the basic information we have marked under section 552.1175 if it pertains to an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b). The city must release the remaining basic information to the requestor.

To conclude, the city must release the marked search warrant and the basic information in the remaining documents to the requestors. However, in releasing basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code if it pertains to an individual who is currently a licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b). The city 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 410630

Enc. Submitted documents

c: Requestor
(w/o enclosures)