



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2011

Mr. Robert N. Bland, IV  
District Attorney  
County of Ector  
300 North Grant, Room 305  
Odessa, Texas 79761

OR2011-02843

Dear Mr. Bland:

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# 409992.

The Ector County District Attorney (the "district attorney") received a request for any case files pertaining to a named individual and six specified case files. You state that you do not possess one of the specified case files or information concerning the named individual.<sup>1</sup> You claim that 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 some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2).

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, some of the submitted information consists of completed investigations, which are expressly public under section 552.022(a)(1). Accordingly, the completed investigations must be released under section 552.022(a)(1) of the Government Code, unless they are excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold the completed investigations, which we have marked, under section 552.103 of the Government Code. Because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under that section for the completed investigations. Further, since section 552.101 of the Government Code is "other law" for purposes of section 552.022, we will also consider your argument under this exception for the information at issue.

Section 552.108(a)(1) 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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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 seek to withhold the submitted information under section 552.108(a)(1). You state cause numbers D-37, 899; A-37, 462; and D-21, 817 relate to pending active criminal prosecutions and state that release of the case files could interfere with these prosecutions. Further, you state that cause numbers C-30, 585 and D-24, 896 pertain to a murder victim and that these case files will be used in a criminal investigation and prosecution of the alleged murderer. Based on your representations and our review, we conclude section 552.108(a)(1) is 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) (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).

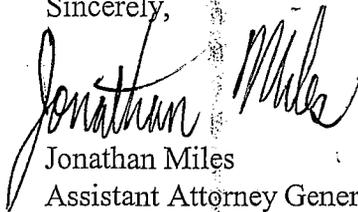
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to

the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 187. Thus, with the exception of basic information, the district attorney may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 409992

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we do not address your arguments under sections 552.101 and 552.108(a)(4) for the submitted information or section 552.103 for the information not subject to section 552.022, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).