



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2011

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

OR2011-02922

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# 410347 (Fort Worth PIR No. W005524).

The City of Fort Worth (the "city") received a request for the full reports and written statements related to two specified incidents. You state you have redacted a Texas driver's license number under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state you have redacted a social security number pursuant to section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure is required to submit to this office

¹Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The city received the request for information on December 6, 2010. Thus, the city was required to submit the information required by section 552.301(e) by December 28, 2010. The city submitted a copy of the written request for information on December 29, 2010. Consequently, we find the city failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You seek to withhold the submitted information under section 552.108, 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. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, we find the city's failure to comply with section 552.301 has resulted in its waiver of section 552.108. Nevertheless, the need of a governmental body, other than the agency seeking an open records decision, to withhold information under section 552.108 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2–3 (1991). You provide an affidavit showing the Tarrant County District Attorney's Office (the "district attorney") objects to the release of the information at issue under section 552.108. Accordingly, we will consider whether the city may withhold the submitted information under section 552.108 on behalf of the district attorney.

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). 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). The district attorney asserts report 10-91226 relates to a pending criminal prosecution and release of the report would interfere with the prosecution of the alleged crime. Based on the district attorney's representation and our review, we conclude that release of report 10-91226 would interfere with the detection, investigation, or prosecution of a 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). Accordingly, we find section 552.108(a)(1) is applicable to report 10-91226.

We note, however, that 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*. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, the city must release basic information about the arrested person, the arrest, and the crime in report 10-91226 pursuant to section 552.108(c) of the Government Code.

As to report 10-61391, the district attorney contends the information pertains to a criminal prosecution that resulted in a conviction and a sentence of probation for twelve months. The district attorney states in the event the defendant violates the terms and conditions of his probation, the defendant could be sentenced according to the court's ruling. Further, the district attorney states if the defendant receives any jail time, he will not have yet exhausted his state and/or federal post conviction remedies. Thus, we understand the district attorney to argue the criminal prosecution at issue is still pending because the defendant might appeal a possible sentence. However, we note that a mere chance of an appeal is insufficient to demonstrate that the release of the submitted information will interfere with law enforcement efforts. Thus, the city may not withhold any of the information in report 10-61391 under section 552.108(a)(1) of the Government Code.

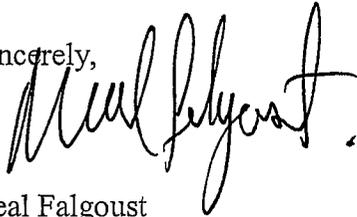
In summary, with the exception of basic information, the city may withhold report 10-91226 under section 552.108(a)(1) of the Government Code. The remaining information must be released.²

²We note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released in this instance. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the city receives another request for this information from a different requestor, the city must again seek a ruling 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 410347

Enc. Submitted documents

c: Requestor
(w/o enclosures)