



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2011

Mr. Joe Gorfida, Jr.  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard Street  
Dallas, Texas 75201

OR2011-04575

Dear Mr. Gorfida:

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# 413433.

The Hutchins Police Department (the "department"), which you represent, received a request for nine categories of information related to the arrest of a named individual and the 9-1-1 radio log records for calls to a specified address for a specified time period. You state you have provided the requestor with a portion of the requested information. You state you do not have information responsive to two categories of the request. You claim that 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.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. 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, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information related to incident number 20100245, which you have marked under section 552.108(a)(1) of the Government Code, is related to a pending criminal investigation. We note the information at issue includes a *Miranda* warning signed by the suspect. Because a copy of this document, which we have marked, has been provided to the suspect, we find its 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 *Miranda* warning under section 552.108(a)(1). However, based on your representation, we conclude that release of the remaining information related to incident number 20100245 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) is generally applicable to this information.

However, section 552.108 does not except from required public 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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portion of the submitted report for incident number 20100245. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Accordingly, with the exception of the *Miranda* warning and basic information, which must include a detailed description of the offense, the department may withhold the information related to incident number 20100245 under section 552.108(a)(1) of the Government Code.

You state that the information you have marked under section 552.108(a)(2) is related to "crimes that have not been fully investigated, and which have not yet resulted in a conviction or deferred adjudication." However, section 552.108(a)(2) is applicable only if the information relates to a concluded investigation. You have not explained how this information is related to a concluded investigation. Thus, you have not demonstrated the applicability of section 552.108(a)(2). Therefore, you may not withhold the remaining information under section 552.108(a)(2) of the Government Code.

Additionally, you have marked a portion of the remaining information under both section 552.108(a)(1) and section 552.108(a)(2). As you have provided this office with conflicting representations for this information, we find you have not demonstrated the applicability of section 552.108 to this information, and it may not be withheld under section 552.108 of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas license plate number we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, with the exception of the *Miranda* warning and basic information, which must include a detailed description of the offense, the department may withhold the information related to incident number 20100245 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas license plate number we have marked under section 552.130 of the Government Code. The remaining information must be released.

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

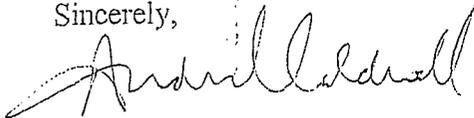
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 cursive script, appearing to read "Andrea L. Caldwell".

Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 413433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)