



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 11, 2011

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
810 Overland
El Paso, Texas 79901

OR2011-05030

Dear Mr. Batoon:

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# 414124.

The City of El Paso (the "city") received a request for information pertaining to a specified case and records pertaining to eight named city police officers. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information includes warnings signed by a magistrate. 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 raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" that makes court records confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

generally). Thus, the court-filed documents we have marked may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of the court-filed documents, they must be released.

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). You provide a letter from the Office of the District Attorney for the 34th Judicial District (the “district attorney”) stating “[t]he requested documents constitute evidence provided by witnesses, law enforcement reports, photographs, and other information related to the detection, investigation, and prosecution of crime” and the release of this information would interfere with an ongoing prosecution.” Based upon this representation and our review, we conclude release of the information we have marked 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the information we have marked.

We note, 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). This subsection 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 (summarizing types of information considered basic information). Thus, with the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

Furthermore, the remaining information you seek to withhold under section 552.108 consists of administrative records. We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). You do not explain how release of this administrative information would interfere with the detection, investigation, or prosecution of crime. Thus, we find you have failed to establish the applicability of section 552.108(a)(1) of the Government Code to the remaining information. Accordingly, we find the information at issue is not subject to section 552.108, and the city may not withhold it on that basis.

The district attorney also asserts the remaining information should be withheld under section 552.103 of the Government Code. *See* Open Records Decision No. 586 at 3 (1991); Open Records Decision Nos. 469 (1987) (university may withhold information under Gov’t

Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). Section 552.103 provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). You inform us the submitted information pertains to a currently pending criminal case. We note the city is not a party to the criminal proceeding and, therefore, does not have a litigation interest in the matter for purposes of section 552.103. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. The district attorney states in its letter that it currently has charges pending against the suspect in the specified case in the 171st District Court and in County Court No. 2 for two counts of aggravated assault with a deadly weapon, assault on a public servant, and resisting arrest, search, or transport. However, the district attorney has not provided any specific arguments explaining how the administrative information at issue relates to this pending criminal litigation. See Gov't Code § 552.301(e)(1) (requiring governmental body to explain why raised exceptions apply); Open Records Decision No. 638 at 3 (1996) (requiring governmental body "to explain or describe how the requested information relates to" litigation). Therefore, we

conclude the district attorney has failed to establish section 552.103 is applicable to the information at issue. Accordingly, the city may not withhold the remaining information under section 552.103 of the Government Code.

We note the remaining information contains Texas motor vehicle record information.² 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. Gov't Code § 552.130(a)(1), (2). Thus, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

The remaining information contains social security numbers. Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the city may withhold social security numbers in the remaining information under section 552.147 of the Government Code.⁴

In summary, the city must release the court-filed documents subject to section 552.022(a)(17), which we have marked. With the exception of basic information, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The city may withhold the social security numbers of living persons under section 552.147 of the Government Code. The city must release the remaining information.

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,

²The 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).

³We 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 driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note section 552.147(b) of the Government Code authorizes a governmental 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.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", written in a cursive style.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 414124

Enc. Submitted documents

c: Requestor
(w/o enclosures)