



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2011

Ms. Teresa L. Presley  
Records Manager  
City of Frisco  
7200 Stonebrook Parkway  
Frisco, Texas 75034

OR2011-05781

Dear Ms. Presley:

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# 415561.

The Frisco Police Department (the "department") received three requests from three different requestors for information pertaining to a specified incident, including 9-1-1 call information, specified court documents, and calls for service at a certain address for the past two years.<sup>1</sup> You state the department has no information responsive to a portion of one the requests.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.107(2) and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted search warrant affidavit, which we have marked, is not responsive to the instant requests. This ruling does not address the public availability of any

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<sup>1</sup>You state, and the submitted information reflects, that the third requestor amended his initial request.

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information that is not responsive to the requests, and the department need not release that information in response to the instant requests.<sup>3</sup> Further, we note you have not submitted information pertaining to the request for previous calls for service at a certain address for the past two years. To the extent any information responsive to this portion of the request existed on the date the department received the requests, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains search warrants that have 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 to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the submitted search warrants under section 552.108 and they must be released to the requestors to the extent they are 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state and have submitted an affidavit 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). Thus, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

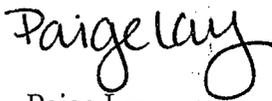
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<sup>3</sup>As our ruling on this information is dispositive, we need not address your argument under section 552.107(2) of the Government Code.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 415561

Enc. Submitted documents

cc: 3 Requestors  
(w/o enclosures)