



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 20, 2011

Ms. Jennifer C. Cohen  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78765-4087

OR2011-07146

Dear Ms. Cohen:

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# 418274 (DPS ORA# 11-0548).

The Texas Department of Public Safety (the "department") received a request for any 9-1-1 calls regarding a specified incident and any other documents created or collected by the department regarding its investigation of the incident. You state the department has provided the requestor with basic information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a search warrant that has been filed with a 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 seek to withhold this information under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such,

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<sup>1</sup>Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976).

section 552.108 is not “other law” that makes information expressly confidential for purposes of section 552.022(a)(17). Thus, the department may not withhold the court-filed document we have marked under section 552.108(a)(1) of the Government Code. However, as section 552.1175 is “other law” for purposes of section 552.022, we will consider your assertion of that exception for this information.

Section 552.1175 of the Government Code provides in part:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(b). Upon review, we find the documents at issue do not contain any information subject to section 552.1175. Thus, section 552.1175 is not applicable, and the department may not withhold the information subject to section 552.022 on that basis. As the department claims no other exceptions for the information subject to section 552.022(a)(17), the department must release it.

Next, we turn to the remaining information not subject to section 552.022. 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 state the remaining information pertains to an ongoing criminal case in which charges are pending against one or more individuals. You state that release of this information would interfere with the investigation and prosecution of this case. *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

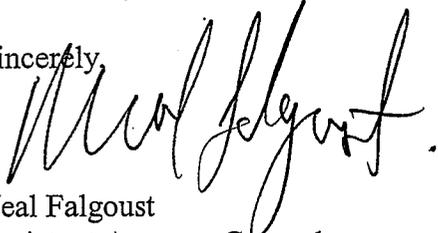
(Tex. 1976). Based on your representations and our review, we agree the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the department must release the information we have marked under section 552.022(a)(17) of the Government Code. The department may withhold the remaining information under section 552.108(a)(1) 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 418274

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 remaining arguments against disclosure.