ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-07803

Dear Ms. Rangel:

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# 422026.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information relating to all offenses committed by a named individual on or after a specified date, including a specified arrest, and all records pertaining a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 documents that have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under other law. 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

[1]We assume that 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 that those records contain substantially different types of information than that submitted to this office.

is, therefore, not "other law" that makes court records confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions generally). Further, although we understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Thus, the court-filed documents we have marked may not be withheld under section 552.108 of the Government Code or under section 552.101 of the Government Code in conjunction with common-law privacy. 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(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a case that is pending prosecution with the Fort Bend County District Attorney's Office. We note that a portion of the submitted information pertains to an administrative investigation of an inmate grievance. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state that the information in the administrative investigation may be used in the pending criminal prosecution. Based on your representations and our review, we find that release of the remaining 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) (specifying law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree that section 552.108(a)(1) is applicable to the remaining information.

We note 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). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The sheriff must release basic information even if it does not literally appear on the front page of an offense or arrest report. *See* ORD 127

at 3-4. Thus, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.[2]

In summary, the sheriff must release the court-filed documents. With the exception of basic information, the sheriff 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, 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,

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 422026

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[2]As our ruing is dispositive, we do not address your remaining arguments against disclosure of this information.