



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-07863

Dear Mr. Weir:

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# 419498 (COSA File No. W000076).

The City of San Antonio (the "city") received a request for the police incident reports regarding a specified fire. You claim 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.

Initially, we note some of the information you have submitted is not responsive to the request. The requestor seeks reports regarding a specified fire. The submitted information contains information pertaining to a DWI stop involving unrelated individuals. These documents are not responsive to the request. This ruling does not address the public availability of non-responsive information, and the city need not release information that is not responsive to the request.

Next, we note the submitted information contains documents that have 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, section 552.108 is not “other law” that makes information expressly confidential for purposes of section 552.022(a)(17). Thus, the city may not withhold the court-filed documents we have marked under section 552.108(a)(1) of the Government Code. As the city raises no further exceptions for this information, it must be released.

We turn next to the remaining information not subject to section 552.022 of the Government Code. 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 information at issue relates to an open investigation by the San Antonio Police Department, and release of the information would jeopardize the investigation and any subsequent prosecution. Based on your representation and our review, we agree section 552.108(a)(1) is applicable. *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).

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). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 186–87. This information includes, but is not limited to, a detailed description of the offense, the premises involved, the location of the crime, and the property involved. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the information we have marked under section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining responsive 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,

A handwritten signature in cursive script, appearing to read "Neal Falgoust".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 419498

Enc. Submitted documents

c: Requestor
(w/o enclosures)