



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2011

Mr. Peter Scott
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2011-08344

Dear Mr. Scott:

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# 420548 (City ID# 123).

The Wichita Falls Police Department (the "department") received a request for the incident report and associated "blood work" pertaining to offense report number 11-010885. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested blood test results for our review. Thus, if the requested blood test results existed when the present request was received, we assume they have been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information includes a magistrate's warning, which we have marked, that has been filed with a court, and, thus, is subject to section 552.022(a)(17) of the Government Code. 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 seek to withhold this document under section 552.108 of the Government Code, this section 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), and the department may not withhold the marked magistrate's warning on that basis. As you raise no further exceptions against the disclosure of the marked magistrate's warning, it must be released pursuant to section 552.022(a)(17).

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 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 provide a representation from the Wichita County District Attorney's Office stating, that case number 11-010885 is currently pending prosecution. Based on these representations and our review, we conclude that the 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) (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). Accordingly, section 552.108(a)(1) is applicable to the remaining information.

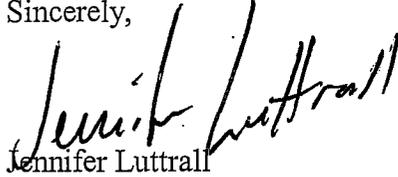
However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Thus, the city must release the types of basic information listed in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include Texas motor vehicle record information encompassed by section 552.130 of the Government Code. See ORD 127 at 3-4. Therefore, with the exception of basic information, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

In summary, the marked magistrate's warning must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the remaining information may be withheld 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 420548

Enc. Submitted documents

c: Requestor
(w/o enclosures)