



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2011

Ms. Miriam Rodrigues
Administrative Assistant
City of Harker Heights
402 Indian Trail
Harker Heights, Texas 76548

OR2011-08974

Dear Ms. Rodrigues:

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# 426423.

The City of Harker Heights (the "city") received a request for information pertaining to the requestor and a named individual at a specified address. You state that the city has released some of the requested information. You claim that 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 the submitted information includes a document filed with a court, which is expressly public under section 552.022(a)(17) of the Government Code. *See Gov't Code* § 552.022(a)(17). Such information must be released unless it is expressly confidential under "other law." You claim the court-filed document is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108).* Therefore, the city may not withhold the court-filed document, which we have marked, under section 552.108 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). Generally, 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 inform us that case number 10-02940 relates to a pending criminal prosecution. Based upon your representation and our review, we conclude that the release of the remaining information in case number 10-02940 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, section 552.108(a)(1) is applicable to the remaining information in case number 10-02940.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information relates to criminal investigations that have concluded and did not result in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) is generally applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the city may withhold the remaining information in case number 10-02940 under section 552.108(a)(1) of the Government Code and the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the city must release the court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which you state has been released, the city may withhold the remaining information in case number 10-02940 under section 552.108(a)(1) of the Government Code and the remaining information under section 552.108(a)(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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 426423

Enc. Submitted documents

c: Requestor
(w/o enclosures)