



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

Ms. Lisa D. Mares
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2011-11086

Dear Ms. Mares:

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# 425751.

The Weatherford Police Department (the "department"), which you represent, received two requests from the same requestor for the complete investigation of a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.119, and 552.151 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains search warrants signed by a magistrate. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you seek to withhold the search warrants under sections 552.103 and 552.108 of the Government Code, those are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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, sections 552.103 and 552.108 are not "other law" that make information expressly confidential for purposes of section 552.022(a)(17). Therefore, the department may not withhold the search warrants under sections 552.103 and 552.108 of the Government Code. We note, however, a portion of the information in

the search warrants is subject to section 552.130 of the Government Code.¹ Because section 552.130 is “other law” for purposes of section 552.022(a)(17), we will consider the applicability of this exception to the information subject to section 552.022(a)(17). We will also consider your arguments for the remaining information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

Next, we address the 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). Generally, 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 that although the remaining information pertains to a criminal case which resulted in the conviction of two individuals, you inform us a criminal case against a third individual is currently pending prosecution. You further assert release of the information at issue would interfere with the investigation or prosecution of this ongoing case. We understand you to contend the information relating to the individuals who were convicted and the individual whose case is currently pending prosecution is so intertwined that it cannot be easily separated. Based on these representations and our review, we conclude 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 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.

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). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the department must release the information we have marked subject to section 552.022(a)(17) of the Government Code.³ In doing so, the department must withhold the information we have marked under section 552.130 of the Government Code. Except for basic information, 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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 425751

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).