



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2011

Mr. Benjamin Sampract
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3RD Floor
Fort Worth, Texas 76102

OR2011-12170

Dear Mr. Sampract:

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# 429154 (ORR# W009660).

The City of Fort Worth (the "city") received a request for incident report numbers 05029308 and 05040693. You claim the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city did not submit the requested incident report number 05029308. We assume that, to the extent this report existed and was maintained by the city when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

We next note the submitted information consists of incident report number 05040693 that, you inform us, resulted in a conviction. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. See *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 No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the department may not withhold this information under section 552.103. However, we will address your arguments to withhold this information under section 552.108. See Gov't Code § 552.022(a)(1).

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” 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 Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted a representation from the Deputy Chief of the Misdemeanor Division of the Tarrant County District Attorney's Office (the “district attorney”), who informs us the submitted information relates to a case that resulted in conviction, but the defendant in that proceeding has filed a writ of habeas corpus. The district attorney asserts release of the submitted information would unduly interfere with the district attorney's prosecution of the defendant's appeal of his felony conviction and any potential retrial of his case. However, a habeas corpus proceeding is a civil proceeding. Thus, habeas corpus proceedings do not establish an ongoing criminal prosecution for purposes of section 552.108(a)(1). Accordingly, the department may not withhold the submitted information on this basis. Therefore, the department must release the submitted information to the requestor.¹

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,

¹We note the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. See Gov't Code § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor. We note, however, pursuant to Open Records Decision No. 684 (2009), the department is authorized to withhold from a different requestor this requestor's driver's license number under section 552.130 of the Government Code without requesting a decision from this office. Further, pursuant to section 552.147(b) of the Government Code, the department is authorized to withhold the individual's social security number without the necessity of requesting a decision from this office.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 429154

Enc. Submitted documents

c: Requestor
(w/o enclosures)