



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Ms. Jo Spurger
Administrative Assistant
Somervell County Sheriff's Department
750 East Gibbs Boulevard
Glen Rose, Texas 76043

OR2011-12913

Dear Ms. Spurger:

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# 429127.

The Somervell County Sheriff's Department (the "sheriff") received a request for all assault and arson reports involving the requestor. You state you have released some information to the requestor.¹ 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 you have submitted the reports you have released to the requestor and the reports you seek to withhold. This information does not include the requested arson reports. To the extent such information existed on the date the sheriff received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release as soon as

¹We note the information being released contains information to which the requestor has a right of access as the individual whose information is at issue. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Because such information may be confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note that the submitted information contains documents that have been filed with a court. Pursuant to section 552.022(a)(17) of the Government Code, documents filed with a court must be released, except to the extent that they are confidential under other law. You claim that these documents are 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 may be waived. *See* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). Therefore, the court-filed documents, which we have marked, must be released under section 552.022(a)(17) of the Government Code. However, we will address your arguments against disclosure of the remaining information that is not subject to section 552.022(a)(17).

You assert that the remaining information is excepted from disclosure under section 552.108(a)(2) of the Government Code. 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance.

However, as you acknowledge, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* 531 S.W.2d at 186-88. The sheriff must release basic information, including a detailed description of the offense, even if the information does not appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, the sheriff may withhold the remaining information from disclosure based on section 552.108(a)(2).

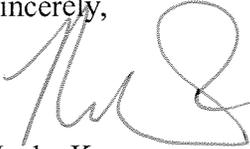
In summary, the sheriff must release the information we have marked that is subject to section 552.022(a)(17) of the Government Code. With the exception of basic information,

the sheriff may withhold 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 429127

Enc. Submitted documents

cc: Requestor
(w/o enclosures)