



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2011

Mr. Robert G. Schleier, Jr.
For the City of Kilgore
Law Offices of Robert G. Schleier, Jr.
116 North Kilgore Street
Kilgore, Texas 75662

OR2011-14181

Dear Mr. Scheleier:

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# 431612.

The Kilgore Police Department (the “department”), which you represent, received a request for information pertaining to a specified incident. You state that the department is not in possession of some of the requested information.¹ You claim a portion of 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.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the narrative portion of the submitted report is related to a pending criminal investigation. Based on your representations and our review, we conclude that the release

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the narrative portion of the submitted report 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, we find section 552.108(a)(1) is generally applicable to the narrative portion of the submitted report.

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*. *See* 531 S.W.2d at 186-87. Basic information includes, among other things, a detailed description of the offense. *See id.* at 179-80, 185-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you wish to withhold the entire narrative portion of the submitted report under section 552.108. However, the remaining information does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See* ORD 127. Thus, with the exception of a detailed description of the offense, the department may withhold the narrative portion of the submitted report under section 552.108(a)(1).

We note a portion of the remaining information is subject to section 552.130 of the Government Code.² Section 552.130(a)(1) provides that information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country 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(a)(1)). Accordingly, the department must withhold the driver's license number we have marked pursuant to section 552.130 of the Government Code.

In summary, with the exception a detailed description of the offense, the department may withhold the narrative portion of the submitted report under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.³

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note the remaining information includes the requestor's Texas driver's license number, which the department would ordinarily be required to withhold under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a special right of access to his own Texas driver's license number. *See* Gov't Code § 552.023(a). However, if the department receives another request for these same records from a person other than one with a right of access under section 552.023, the department is authorized to withhold the requestor's Texas driver's license number pursuant to section 552.130 without the necessity of requesting an attorney general decision.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 431612

Enc. Submitted documents

c: Requestor
(w/o enclosures)