



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Mr. John T. Fleming
County Attorney
County of Nacogdoches
101 West Main Street, Room 230
Nacogdoches, Texas 75961

OR2011-16094

Dear Mr. Fleming:

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# 435033.

The County of Nacogdoches (the "county") received a request for information pertaining to complaints filed against and investigations involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive because it was created after the date the county received the instant request. The county need not release this nonresponsive information, which we have marked, in response to this request, and this ruling will not address that information.

We next note the responsive information contains vouchers, checks, receipts, deposit records, and other information subject to section 552.022(a)(3) of the Government Code, which provides that "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" is subject to required public disclosure unless it is made expressly confidential under "other law." Gov't Code § 552.022(a)(3). Although you raise sections 552.103 and 552.108 of the Government Code for this information, those sections are discretionary exceptions to disclosure that protect

only a governmental body's interests and may be waived. *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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 are not other laws that make information confidential for the purposes of section 552.022. Therefore, you may not withhold the information at issue, which we have marked, under sections 552.103 or 552.108. However, we note a portion of this information is subject to section 552.136 of the Government Code, which does constitute other law for purposes of section 552.022.¹ Therefore, we will consider the applicability of that exception.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). The information subject to release under section 552.022 contains bank routing numbers and bank account numbers, which we have marked. The county must withhold this information under section 552.136. As you raise no additional exceptions for the remaining information subject to section 552.022, it must be released to the requestor.

You assert the remaining responsive information is excepted under section 552.108 of the Government Code. Section 552.108 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[.]” *Id.* § 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 inform us that the remaining responsive information is related to a pending criminal investigation. You have provided a communication in which an investigator with the Texas Rangers confirms that the requested information is related to a pending investigation and requests that the information not be released. Based on your representation and the communication from the Texas Rangers, we conclude that the county may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. *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).

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

In summary, with the exception of the information we have marked under section 552.136 of the Government Code, the county must release the information we have marked that is subject to section 552.022(a)(3) of the Government Code. The county may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.²

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# 435033

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As we are able to make this determination, we need not address your remaining arguments against disclosure.