



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2011

Lieutenant William Ryan
Record Division
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2011-16678

Dear Lieutenant Ryan:

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# 436103.

The Pharr Police Department (the "department") received a request for a specified offense report. You state some of the requested information will be released to the requestor. 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 state "this is the second request for the same information." However, we have no record of a previous request for a ruling from the department concerning the information at issue, and you do not inform this office how the previous request was handled by the department. Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, the department may not withhold the submitted information if it was previously released to the first requestor, unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108 of the Government Code for the submitted information, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not now withhold the submitted information, if it was previously released to the first requestor, under section 552.108 of the Government Code.

Next, we note that if you previously withheld the submitted information without seeking a ruling from this office, then the department failed to comply with the procedural requirements mandated by section 552.301(a). Gov't Code § 552.301(a) (absent a previous determination as to the precise information at issue, a governmental body must ask for a decision from the attorney general about whether requested information that a governmental body seeks to withhold falls within one of the Act's exceptions to disclosure).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). The department claims section 552.108 of the Government Code for the submitted information. As noted previously, this exception is discretionary in nature and may be waived. Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code if you previously withheld the submitted information from the first requestor without seeking a ruling from this office.

Finally, we note a governmental body's duty to request a decision from this office as to whether information may properly be withheld under the Act does not arise until the governmental body receives a written request for the information. *See Id.* § 552.301(a). Thus, if the previous request was a verbal request, and not in written form, then you are not required to address the verbal request under the Act. If this was the case for the previous request, then we will address the applicability of section 552.108 of the Government Code to the submitted information.

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). A governmental body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing investigation. Based on your representation and our review of the information, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code applies to the submitted information.

We note 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, which you state will be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the department previously released the submitted information to the first requestor or if you previously withheld the submitted information from the first requestor without seeking a ruling from this office, you may not withhold the submitted information under section 552.108, and must release it to the requestor. However, if the previous request was a verbal request, and not in written form, then the department may withhold the submitted information, with the exception of basic 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 436103

Enc. Submitted documents

c: Requestor
(w/o enclosures)