



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2011

Ms. Meredith L. Kennedy  
Assistant District Attorney  
Wichita County  
900 Seventh Street  
Wichita Falls, Texas 76301-2482

OR2011-17256

Dear Ms. Kennedy:

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# 436876.

The Office of the Wichita County Criminal District Attorney (the "district attorney") received two requests from the same requestor for all investigative information and records relating to the December 29, 2009 shooting death of a named individual, including all written or recorded statements, notes made during interrogation, and witness lists.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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<sup>1</sup>We note the district attorney received clarification from the requestor regarding the requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request for information).

<sup>2</sup>Although you cite section 552.103 of the Government Code for a portion of the information, we note section 552.111 of the Government Code is the proper exception for the substance of your argument. Further, you marked the information under section 552.111.

Initially, we note the requestor has excluded the following from his requests: social security numbers; information obtained from the National Crime Information Center or the Texas Crime Information Center; public e-mail addresses; driver's license information; vehicle license plate and vehicle identification numbers; criminal history reports; account numbers; attorney client communications; the work product of the prosecuting attorney or any agent of the prosecuting attorney's office; victim statements; health care communications, except those related to the named individual; birth or death records, except those related to the named individual; the personal information and any records pertaining to persons covered by sections 552.117 and 552.1175 of the Government Code; any credit, debit, or charge card or access device numbers; any records of certain deferred adjudications and certain misdemeanors punishable by fine only; any biometric identifier; and any communication excepted under section 773.091 of the Health and Safety Code, except those related to the named individual. Thus, any such information is not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the district attorney need not release information that is not responsive to the request.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). The submitted information includes search warrants and a search warrant return, which we have marked, that have been signed by a magistrate and are subject to section 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception and does not make information confidential under the Act. *See id.* § 3-26, 28-37 (providing for "confidentiality" of information under specified exceptions); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, the search warrants and search warrant return may not be withheld under section 552.108. As you raise no other exceptions to the disclosure for this information, it must be released. However, we will address your claim under section 552.108 for the remaining information.

Section 552.108(a) 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.” Gov’t Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to a pending criminal murder investigation and prosecution. The requestor, however, argues the case is no longer a pending matter. Whether or not the requested information relates to a pending criminal investigation and prosecution is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986)*. Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See Open Records Decision No. 552 at 4 (1990)*. Thus, based on the district attorney’s representation, we accept the district attorney’s assertion that the remaining information relates to a pending criminal investigation and prosecution. Accordingly, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of crime, and we agree section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 177; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the remaining information from disclosure under section 552.108(a)(1).<sup>3</sup>

In summary, the district attorney must release the search warrants and search warrant return, which we have marked, pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district attorney may withhold the remaining information from disclosure under section 552.108(a)(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.

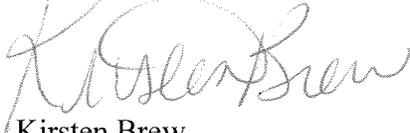
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script, appearing to read "Kirsten Brew".

Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/ag

Ref: ID# 436876

Enc. Submitted documents

c: Requestor  
(w/o enclosures)