



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 14, 2011

Mr. James C. Tidwell
For City of Howe
Wolfe, Tidwell & McCoy, LLP
320 N. Travis Street, Suite 205
Sherman, Texas 75090

OR2011-18415

Dear Mr. Tidwell:

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# 438908.

The City of Howe (the "city"), which you represent, received multiple requests from the same requestor for (1) information pertaining to accidents within the city during the past three years; (2) information regarding the city's police radar units; (3) training records and other information pertaining to a named city police officer; (4) audio and video recordings regarding a specific traffic stop involving the requestor; (5) city ordinances, city council notes, or meeting notes regarding traffic planning and management, as well as city boundaries and county lines; (6) the city's budget for the past three years; (7) information regarding city municipal court (the "court") fine structures and procedures; and (8) information pertaining to all traffic citations issued in the past three years. You state the city does not have any information responsive to portions of the requests.¹ You represent the requested court fine structures and procedures are records of the judiciary and, therefore, are not subject to the Act. Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Government Code prior to enactment of section 552.0035 of the Government Code). You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, and 552.130 of the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information contains court-filed documents, which we have marked. Section 552.022(a) provides, in relevant part:

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

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

Gov't Code § 552.022(a)(17). Although you assert the court-filed documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code, these sections are discretionary and do not make information confidential under the Act. Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *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), 586 (1991) (governmental body may waive section 552.108), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, the city may not withhold the court-filed documents under section 552.103 or section 552.108 of the Government Code. As you have not claimed any other exceptions to disclosure for this information, the city must release the court-filed documents we have marked.

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 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to a pending criminal prosecution. Based on this representation and our review, we conclude the release of this information 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

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the city must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

³As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Ref: ID# 438908

Enc. Submitted documents

c: Requestor
(w/o enclosures)