



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2011

Chief James S. Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2011-18478

Dear Chief Kelley:

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# 439190.

The Sweetwater Police Department (the "department") received a request for information related to a specified case number. You claim the requested information is excepted from disclosure under sections 552.108, 552.1175, 552.119, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301(a). Section 552.301(b) requires a governmental body to ask this office for a decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request, a signed statement of the date of the governmental body's receipt of the request or evidence sufficient to establish the date of receipt. *See id.* § 552.301(e)(1)(C). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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 (Tex. App.—Austin 1990, no writ).

In requesting this decision, you failed to timely provide this office with a statement of the date of the department's receipt of the request for information or evidence of the date of receipt, as required by section 552.301(e)(1)(C). As a result of your violation of section 552.301(e), you also failed to timely demonstrate that the department complied with its ten-business-day deadline under section 552.301(b) in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Your claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See Open Records Decision No. 586 at 2-3 (1991). You inform us the Texas Department of Public Safety (the "DPS") asserts a law enforcement interest in the submitted information. Therefore, we will determine whether the department may withhold the submitted information on behalf of the DPS under section 552.108. We also will consider your claims under sections 552.1175, 552.119, 552.132, and 552.1325 of the Government Code, which can provide compelling reasons for non-disclosure under section 552.302.

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 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 the submitted information is related to an ongoing investigation by the DPS. You state the DPS has asked the department to withhold the submitted information from public disclosure. Based on your representations, we conclude section 552.108(a)(1) is generally applicable to the submitted information. 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

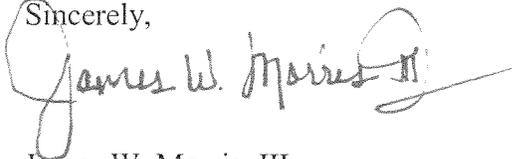
We note section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. See 531 S.W.2d

at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code. As we are able to make this determination, we need not address the other exceptions you claim.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 439190

Enc: Submitted documents

c: Requestor
(w/o enclosures)