



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2012-00360

Dear Mr. Bounds:

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# 441775.

The City of Corpus Christi (the "city") received two requests from the same requestor for his client's personnel file and for all documents the city relied upon to terminate his client's employment. You claim 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 some of the information you have submitted is subject to section 552.022 of the Government Code, which provides:

(a) . . . the following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

. . .

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (3), (15). The employee performance evaluations you have submitted must be released under section 552.022(a)(1) of the Government Code, except as provided by section 552.108. As you raise section 552.108(a)(1) for these evaluations, we will consider this exception for that information. The "Case Payment History" sheets, a representative sample of which we have marked, must be released under section 552.022(a)(3), unless they are expressly confidential under the Act or other law. The job description we have marked must be released pursuant to section 552.022(a)(15), if the city considers job descriptions to be open to the public under its policies, unless it is expressly confidential under the Act or other law. Although you claim section 552.108 for the "Case Payment History" sheets and the job description, this is a discretionary exception that protects a governmental body's interests and may be waived. *See id.* § 552.007; *see also* 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). Therefore, the "Case Payment History" sheets we have indicated may not be withheld under section 552.108 of the Government Code. Likewise, the job description may not be withheld under section 552.108 if it is considered to be open to the public under the city's policies for purposes of section 552.022(a)(15). However, we will consider your assertion of section 552.108 for the job description if it is not considered to be open to the public under the city's policies, and for the remaining information not subject to section 552.022 of the Government Code.

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). We note section 552.108 may be invoked by any proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. You state, and provide a representation from the Nueces

County District Attorney to support your assertion, the submitted information relates to a pending criminal prosecution and release of the information would interfere with that prosecution. 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). Thus, based on these representations and our review, we agree section 552.108(a)(1) is applicable to the information at issue.

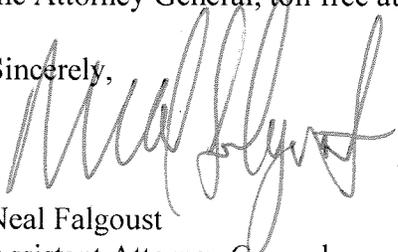
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of an arrest, the physical condition of the arrested person, and a detailed description of the offense. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the city must release the “Case Payment History” sheets we have indicated under section 552.022(a)(3) of the Government Code. If the job description we have marked is considered open under the city’s policies, it must be released under section 552.022(a)(15) of the Government Code. With the exception of basic information, the city may withhold the remaining information under 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 441775

Enc. Submitted documents

c: Requestor
(w/o enclosures)