



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2012

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2012-00473

Dear Ms. Benton:

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# 446693 (LGL-11-1747).

The City of Waco (the "city") received a request for several specified incident reports. You indicate you have released some of the requested information. We understand you are withholding social security numbers pursuant to section 552.147 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed 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 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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

state report numbers 11-4538, 11-1577, 11-6115, 11-13734, 11-13994, 11-14746, and 11-24566 pertain to pending criminal cases. Based on this representation and our review, we conclude the release of the information you have marked 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 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, we find the city may withhold the information you have marked in report numbers 11-4538, 11-1577, 11-6115, 11-13734, 11-13994, 11-14746, and 11-24566 under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 2011-19678 pertains to a closed investigation that did not result in conviction or deferred adjudication. Upon review, we agree section 552.108(a)(2) is applicable to report number 2011-19678.

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). Basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, except for the basic information, the city may withhold report number 2011-19678 under section 552.108(a)(2) of the Government Code.

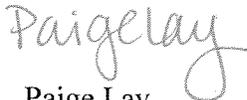
Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. Gov’t Code § 552.130(a)(1), (2). However, section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, *writ ref'd n.r.e.*); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Accordingly, to the extent the marked Texas motor vehicle record information in the submitted information pertains to a living individual or a vehicle owned by a living person, it must be withheld under section 552.130. However, if any of this information pertains solely to a deceased individual, it may not be withheld under section 552.130.

In summary, the city may withhold the information you have marked in report numbers 11-4538, 11-1577, 11-6115, 11-13734, 11-13994, 11-14746, and 11-24566 under section 552.108(a)(1) and except for the basic information, the city may withhold report number 2011-19678 under section 552.108(a)(2) of the Government Code. To the extent the marked Texas motor vehicle record information in the submitted information pertains to a living individual or a vehicle owned by a living person, it must be withheld under section 552.130.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 446693

Enc. Submitted documents

cc: Requestor
(w/o enclosures)