



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Mr. Art Pertile, III
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2012-01257

Dear Mr. Pertile:

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# 443458 (COS11-052).

The City of Stafford (the "city"), which you represent, received a request for police report number 111983PD and any records referring to two named individuals, two specified addresses, or two named companies. You state the city has released some of the responsive information. 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.

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 provide a letter from an assistant district attorney for the Fort Bend County District Attorney's Office (the "district attorney") asserting police report number 111966PD pertains to a criminal prosecution that is pending with the district attorney. Based on this representation and our review, we conclude 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 delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) is applicable to police report number 111966PD. However, the district attorney does not object to release of the remaining information and you do not provide a representation from the district attorney asserting that release of this information will interfere with any criminal investigation or prosecution. Thus, you have failed to demonstrate the applicability of section 552.108(a)(1) to the remaining information and it may not be withheld on that basis.

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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which you state has been released, the city may withhold police report number 111966PD under section 552.108(a)(1) of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code.¹ This section provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov’t Code § 552.130(a)(1). Upon review, we have marked the driver’s license information that is subject to section 552.130(a)(1). We note, however, the information we have marked belongs to the requestor’s spouse, and the requestor, in this instance, may be acting as her spouse’s authorized representative. Under section 552.023 of the Government Code, a person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to whom information relates or person’s authorized representative on grounds that information is considered confidential by privacy principles). Therefore, because section 552.130 protects personal privacy, if the requestor is acting as her spouse’s authorized representative, then she has a right of access under section 552.023 to her spouse’s driver’s license information. In such case, the marked information may not be withheld from her under section 552.130(a)(1). However, if the requestor is not acting as the authorized representative of her spouse, then the city must withhold the marked information under section 552.130(a)(1) of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We also note the remaining information contains two e-mail addresses that are subject to section 552.137 of the Government Code. This section excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We have marked an e-mail address that does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the marked e-mail address under section 552.137 of the Government Code, unless the individual to whom this e-mail address belongs affirmatively consents to its release.² *See id.* § 552.137(b). We note, however, the remaining e-mail address belongs to the requestor. Accordingly, the requestor has a right of access to her own e-mail address and it may not be withheld from her under section 552.137. *See id.*

In summary, with the exception of basic information, police report number 111966PD may be withheld under section 552.108(a)(1) of the Government Code. If the requestor is not acting as the authorized representative of her spouse, then the city must withhold the marked information under section 552.130(a)(1) of the Government Code. The city must withhold the marked e-mail address under section 552.137 of the Government Code, unless the individual to whom this e-mail address belongs affirmatively consents to its release. The remaining information must be released.³

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,

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a personal e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released includes the requestor’s spouse’s social security number. Section 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 an attorney general decision under the Act. *See* Gov’t Code § 552.147(b). However, as noted above, the requestor may be the authorized representative of her spouse. Because section 552.147 protects personal privacy, the requestor may have a right of access to her spouse’s private information under section 552.023 of the Government Code. *See generally id.* § 552.023(a); ORD 481 at 4. Therefore, if the requestor is the authorized representative of her spouse, then her spouse’s social security number must be released to the requestor. If the requestor is not her spouse’s authorized representative, this social security number may be withheld under section 552.147(b) of the Government Code.

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, appearing to read 'KLC', written over a horizontal line.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 443458

Enc. Submitted documents

c: Requestor
(w/o enclosures)