



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2012

Lieutenant William Ryan
Record Division
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2012-02280

Dear Lieutenant Ryan:

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# 445159.

The Pharr Police Department (the “department”) received a request for incident report number 11-9261. You claim that the requested 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 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 that the requested information relates to an ongoing criminal investigation. Based upon this representation, we find the release of the requested 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 n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, which must be released, the department may withhold incident report number 11-9261 under section 552.108(a)(1) of the Government Code.

We note, however, your statement, "This is the second request for the same information." However, we have no record of a previous request for a ruling from the department concerning the information at issue, and you do not inform this office how the previous request was handled by the department. Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. See Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Section 552.108 of the Government Code is a discretionary exception to disclosure and does not make information confidential under the Act. Thus, to the extent the department has previously released the information at issue, the department has waived its claim under section 552.108 of the Government Code and may not withhold it now on that basis. See Gov't Code § 552.007; Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 445159

Enc. Submitted documents

c: Requestor
(w/o enclosures)