



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2012

Ms. Sol M. Cortez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

OR2012-04179

Dear Ms. Cortez:

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# 448338.

The El Paso Police Department (the "department") received a request for all information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. You have also provided a letter from the Office of the District Attorney, 34th Judicial District (the "district attorney's office") who claims that the information at issue is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive because it was created after the date the department received the instant request. The department need not release this non-responsive information in response to this request, and this ruling will not address that information.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state, and the request reflects, the department received the request for information on December 21, 2011. You explain the

department was closed December 23, 26, and 30, 2011, and January 6, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the ten-business-day deadline was January 10, 2012. The department requested a ruling from this office via a letter meter-marked January 11, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the department failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). You raise section 552.108 of the Government Code, which is discretionary 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 section 552.108 subject to waiver). However, 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 Nos. 586 (1991), 469 (1987). Accordingly, because the district attorney's office objects to the release of the information at issue, we will determine whether the department may withhold this information on behalf of the district attorney.

We next note the submitted information includes a search warrant and certificates of magistrate, which we have marked, that have been signed by magistrates. Section 552.022(a)(17) of the Government Code provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act or other law.]" Gov't Code § 552.022(a)(17). Although the district attorney raises sections 552.103 and 552.108 of the Government Code, these are discretionary exceptions that do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, S.W.3d 69, 475-6 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* ORDs 665 at 2 n.5, 663 at 5, 177 at 3. Accordingly, the department may not withhold information subject to section 552.022 under these sections. We note the search warrant contains information subject to section 552.130 of the Government Code, which does make information confidential under

the Act.¹ Therefore, we will address the applicability of this exception to the submitted search warrant.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle title or registration, issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Therefore, the department must withhold the information we have marked within the search warrant under section 552.130 of the Government Code. As no further exceptions against the disclosure of the remaining information in the search warrant and the certificates of magistrate are raised, this information must be released.

Now we address the arguments for the remaining information not subject to section 552.022 of the Government Code. Section 552.108(a) 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[.]” *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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). The district attorney objects to release of the submitted information because release would interfere with a pending criminal appeal. Based upon this representation, we conclude the release of the remaining 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). Thus, section 552.108(a)(1) is generally applicable to the information at issue.

Section 552.108, however, 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. Basic information may not be withheld under section 552.108, 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*). Thus, with the exception of basic information, the department may withhold the remaining information that is not subject to section 552.022 under section 552.108(a)(1) of the Government Code.²

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).

²As our ruling is dispositive, we do not address the district attorney's other argument against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

In summary, the department must release the search warrant and certificates of magistrate, which we have marked, under section 552.022(a)(17) of the Government Code, but must withhold the information we have marked in the search warrant under section 552.130 of Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 448338

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code permits the department to withhold the social security number of a living person without requesting a decision from this office. Gov't Code § 552.147(b).