



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2012

Mr. David K. Walker  
County Attorney  
Montgomery County  
207 West Phillips, Suite 100  
Conroe, Texas 77301

OR2012-04406

Dear Mr. Walker:

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# 452954 (ORR# 2012-0936).

The Montgomery County Sheriff’s Department (the “sheriff”) received a request for information pertaining to a specified arrest. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to a pending criminal prosecution. Based on this representation and our review, we conclude the sheriff generally may withhold Exhibit B under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. Department 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). 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of basic information, which you state will be released, the sheriff may withhold Exhibit B under section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, including section 11 of article 49.25 of the Code of Criminal Procedure, which provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. You state Exhibit C consists of photographs of the deceased taken during an autopsy. You indicate neither of the statutory exceptions to confidentiality is applicable in this instance. We agree the sheriff must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

In summary, except for basic information, the sheriff may withhold Exhibit B under section 552.108 of the Government Code. The sheriff must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure.

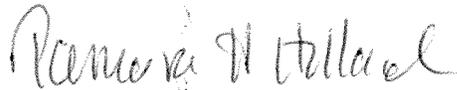
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<sup>1</sup>We note basic information does not include motor vehicle information that is subject to section 552.130 of the Government Code. We further note basic information in this instance includes the social security number of the arrested person. Section 552.147 of the Government Code permits the sheriff to withhold this information without requesting a decision from this office. See Gov’t Code § 552.147(b).

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](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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

Ref: ID# 452954

Enc. Submitted documents

c: Requestor  
(w/o enclosures)