



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Mr. Jeffrey L. Moore
For City of The Colony
Brown & Hofmeister, L.L.P.
740 East Campbell Road
Richardson, Texas 75081

OR2012-04485

Dear Mr. Moore:

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# 448693.

The Colony Police Department (the "department") received a request for a probable cause affidavit and accompanying narrative concerning a specified arrest. You state a probable cause affidavit did not exist at the time of the request.¹ 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.

Initially, we note some of the information you have submitted consists of information other than the requested narrative. This information, which we have marked, is not responsive to the request. Our ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information.

We turn next to the responsive narrative. 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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990), 452 at 3 (1986), 362 at 2 (1983).

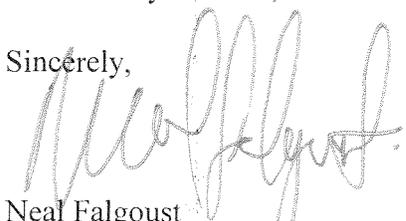
information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 531 S.W.2d 706 (Tex. 1977). You state the responsive information relates to a pending criminal investigation and release of the information could interfere with the detection, investigation, or prosecution of a 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). Based on your representation and our review, we agree section 552.108(a)(1) is applicable.

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*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest and a sufficient portion of the narrative to encompass a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must include the details of the arrest and a sufficient portion of the narrative to encompass a detailed description of the offense, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code.

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,



Neal Falgout
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 448693

Enc. Submitted documents

c: Requestor
(w/o enclosures)