



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2012

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2012-07807

Dear Ms. Benton:

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# 454571 (Waco Reference No. LGL-12-383).

The City of Waco (the “city”) received a request for the arrest warrants and supporting affidavits pertaining to the arrest of a named individual. You inform us the city gave the original warrant to the district attorney’s office and no longer maintains it. We note the Act does not require a governmental body to create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). You claim some of 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.

You seek to withhold the undercover officer’s name in the submitted information under sections 552.108(a)(1) and 552.108(b)(1) of the Government Code. 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ refused n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes the names of the investigating officers. *See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by Houston Chronicle)*. In this instance, the undercover officer

was an investigating officer involved in the incident at issue in the submitted information. Thus, the city may not withhold the officer's information under section 552.108 of the Government Code.

Section 552.152 of the Government Code<sup>1</sup> provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You indicate the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the marked information. Accordingly, we conclude the city must withhold the officer's information you have marked under section 552.152 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](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,



Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/dls

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<sup>1</sup>The 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).

Ref: ID# 454571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)