



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2012

Ms. Lysia H. Bowling  
City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902-1751

OR2012-07957

Dear Ms. Bowling:

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# 454902.

The San Angelo Police Department (the "department") received a request for information pertaining to specified reports. You claim that 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 one of the submitted reports was the subject of a previous request for information from the same requestor, in response to which this office issued Open Records Letter No. 2011-13129 (2011). In that ruling, we concluded the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code and release the remaining information to this requestor pursuant to section 261.201(k) of the Family Code. You now seek to withhold the report at issue under section 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose

information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the information it previously released to this requestor unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise section 552.108 for the information we previously ordered released to this requestor. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, no portion of the report at issue may be withheld from the present requestor under section 552.108 of the Government Code. Accordingly, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-13129 was based have changed, we conclude the department must continue to rely on Open Records Letter No. 2011-13129 as a previous determination and withhold and release the report at issue in accordance with that ruling.<sup>1</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your argument against disclosure of the remaining report, which was not encompassed by the previous ruling.

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 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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining report relates to a pending criminal investigation. Based on your representations and our review, we find that release of the report at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, section 552.108(a)(1) is applicable to this report. *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 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

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<sup>1</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the report at issue under section 552.108(a)(1).

In summary, the department must continue to rely on Open Records Letter No. 2011-13129 as a previous determination and withhold and release the report at issue in accordance with that ruling. With the exception of basic information, the department may withhold the remaining report 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](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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/som

Ref: ID# 454902

Enc. Submitted documents

c: Requestor  
(w/o enclosures)