



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2012

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2012-11785

Dear Ms. Evans:

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# 460222 (Houston GC No. 19697).

The Houston Police Department (the "department") received a request for information pertaining to a specified accident and DWI charge involving the requestor's client, including the offense report, notes, diagrams, statements, witness statements, photographs, field sobriety tests, officer's notes, and any other related information. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information contains a court-filed pleading that is subject to section 552.022 of the Government Code. Section 552.022(a)(17) 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). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception that may be waived and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 does not make information confidential for the purposes of section 552.022, and the department may not withhold the information subject to section 552.022 on that basis. As you raise no other exceptions to

disclosure for this document subject to section 552.022(a)(17), it must be released to the requestor. However, we will address your claim under section 552.108 for the remaining information.

Section 552.108(a)(1) 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 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*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an open and active criminal prosecution. The requestor asserts section 552.108(a)(1) is not applicable to the information because the case was dismissed on June 14, 2012. We note the Motion to Dismiss was filed after the department received the present request for information, thus the criminal prosecution for this case was pending on the date the department received the request. Therefore, based on your representation, we agree that section 552.108(a)(1) is generally applicable to the remaining information. *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, we note that the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. Copies of these forms were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108 of the Government Code.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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<sup>1</sup>We note the information being released contains confidential information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person’s privacy interest); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person requests information concerning himself). As such information would be confidential with respect to the general public, if the department receives another request for this information from a different requestor it must again seek a ruling from this office.

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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 460222

Enc. Submitted documents

c: Requestor  
(w/o enclosures)