



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78131-1747

OR2012-14961

Dear Ms. Richard:

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# 470422.

The New Braunfels Police Department (the "department") received a request for records of specified incidents and other information. You state some of the requested information either has been or will be released, to the extent it exists.¹ You inform us driver's license numbers will be redacted from the information the department is releasing.² You claim other responsive information is excepted from disclosure under section 552.108 of the Government

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note section 552.130(c) of the Government Code authorizes a governmental body to redact the driver's license and personal identification information described in subsections 552.130(a)(1) and (a)(3) without the necessity of requesting a decision from this office. See Gov't Code § 552.130(c); see also *id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor).

Code. We have considered the exception you claim and reviewed the information you submitted. We also have considered the comments we received from the requestor.³

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 must reasonably explain how and why section 552.108 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 the information submitted as Exhibit D is related to a pending criminal prosecution. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to Exhibit D. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state the information submitted as Exhibit C is related to a concluded investigation that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is generally applicable to Exhibit C.

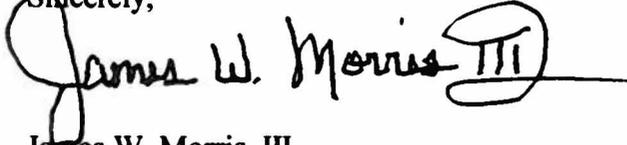
We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *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*). The department must release basic information with respect to Exhibits C and D, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information in Exhibit D under section 552.108(a)(1) of the Government Code and the remaining information in Exhibit C under section 552.108(a)(2) 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.

³*See* Gov’t Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 470422

Enc: Submitted information

c: Requestor
(w/o enclosures)