



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 27, 2012

Captain Jim Davenport  
Trenton Police Department  
216 Hamilton Street  
Trenton, Texas 75490

OR2012-18968

Dear Captain Davenport:

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# 471998.

The Trenton Police Department (the "department") received a request for information regarding the arrest of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the Collin County Criminal District Attorney's Office (the "district attorney's office"). See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created after the present request for information was received.<sup>1</sup> This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to 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).

Next, we note the responsive information includes a search warrant that is subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the department and the district attorney’s office seek to withhold this information under sections 552.103, 552.108, and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the search warrant, which we have marked, under sections 552.103, 552.108, or 552.111. The Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* Tex. R. Civ. P. 2. Thus, because the information at issue relates to a criminal case, the attorney work product privilege in rule 192.5 of the Texas Rules of Civil Procedure does not apply to it. However, we note the search warrant contains information that is subject to section 552.130 of the Government Code, which makes information confidential under the Act. Therefore, we will address the applicability of section 552.130 to the search warrant. We will also consider the applicability of the remaining exceptions you raise to the information not subject to section 552.022.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(2). Therefore, the department must withhold the motor vehicle information we have marked in the search warrant under section 552.130. As you raise no additional exceptions to disclosure for the search warrant, it must be released to the requestor.

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(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The district attorney’s office objects to the release of the requested information because it would compromise pending criminal cases. Based on the representation of the district attorney’s office, we find release of the remaining responsive information would interfere with the detection, investigation, or prosecution of 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). Thus, section 552.108(a)(1) is applicable to the remaining responsive information.

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). We note basic information includes a detailed description of the offense, but does not include motor vehicle information encompassed by section 552.130 of the Government Code. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

We note basic information being released includes the social security number of the arrestee. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov't Code § 552.147(a). Therefore, the department may withhold the social security number within the basic information under section 552.147(a) of the Government Code.<sup>2</sup>

In summary, the search warrant, which we have marked, is subject to section 552.022(a)(17) of the Government Code and must be released, except for the information we have marked to withhold under section 552.130 of the Government Code. With the exception of basic information, the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>3</sup> In releasing the basic information, the department may withhold the arrestee's social security number under section 552.147 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

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<sup>2</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

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 "Britni Fabian". The signature is written in a cursive, slightly slanted style.

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/eb

Ref: ID# 471998

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Debbie F. Harrison  
Assistant District Attorney  
Collin County  
2100 Bloomdale Road, Suite 100  
McKinney, Texas 75071  
(w/o enclosures)