



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2012

Ms. Monica Hernandez
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2012-19856

Dear Ms. Hernandez:

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# 473402 (COSA File No. W010287).

The City of San Antonio (the "city") received a request for information pertaining to a specified dog bite incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents subject to section 552.022(a)(17). Section 552.022(a)(17) of the Government Code 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 you seek to withhold these documents under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the city may not withhold the marked court-filed documents under section 552.108. As the city raises no further exceptions for this information, it must be released.

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). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. See Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim section 552.108 protects records in its possession. If an administrative agency’s investigation reveals possible criminal conduct the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. See Gov’t Code § 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 at 1, 474 (1987), 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident).

You explain the information at issue consists of reports created by the city’s Animal Care Services Department (the “department”). You state the department is charged with enforcing the city’s animal ordinances and dangerous dog laws. The information at issue pertains to an open case involving a dog attack. You state the investigations will be forwarded to the Bexar County District Attorney’s Office for prosecution of criminal offenses. Based on these representations and our review, we conclude that the release of the information at issue 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, we find section 552.108(a)(1) is applicable to the submitted information.

We note 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186–87; see also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information,

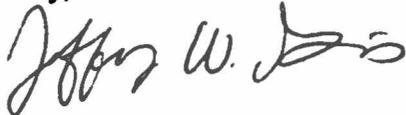
¹As this ruling is dispositive of this information, we do not address your remaining argument against its disclosure.

the city may withhold the remaining information 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, 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/akg

Ref: ID# 473402

Enc. Submitted documents

c: Requestor
(w/o enclosures)