



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2013

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2013-01873

Dear Ms. Grace:

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# 482555.

The Austin Police Department (the "department") received a request for information pertaining to a specified arrest. You claim 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 the submitted information contains a search warrant that has been filed with a court which 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 additional exceptions to disclosure for the information subject to section 552.022(a)(17), which we have marked, the department must release it 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 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 remaining information relates to a pending criminal investigation and release of this 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).

We note, however, the remaining information includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The department provided copies of these forms 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.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186–87; Open Records Decision No. 127 (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).

In summary, the department must release the marked search warrant pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which the department must also release, the department may withhold the remaining information under section 552.108(a)(1).¹

¹We note the information being released contains the requestor’s drivers license information, which is generally confidential under section 552.130(a)(1) of the Government Code. However, because section 552.130 protects personal privacy, the requestor has a right of access to his own information under section 552.023 of the Government Code. *See Gov’t Code § 552.023(a)* (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov’t Code § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the department to redact the driver’s license information at issue.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 482555

Enc. Submitted documents

c: Requestor
(w/o enclosures)