



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2013

Ms. Donna L. Johnson  
Counsel for The City of Humble  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2013-03458

Dear Ms. Johnson:

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# 479965.

The City of Humble (the "city"), which you represent, received a request for a specified investigation file. You indicate the city will redact Texas license plate numbers pursuant to Open Records Decision No. 684 (2009)<sup>1</sup> Texas driver's license numbers pursuant to section 552.130(c)<sup>2</sup> of the Government Code, and social security numbers pursuant to section 552.147(b)<sup>3</sup> of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the

---

<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>Section 552.130(c) authorizes a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>3</sup>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 an attorney general decision. Gov't Code § 552.147(b).

Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information, which we have marked, consists of records that have been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* 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 for purposes of section 552.022(a)(17). Thus, the city may not withhold the court-filed documents under section 552.108 of the Government Code. You also raise section 552.101 of the Government Code in conjunction with common-law privacy. We note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city may not withhold the court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.101 of the Government Code can make information confidential for the purposes of section 552.022, we will address your remaining argument under that section for the court-filed documents. We will also address your arguments for the information not subject to section 552.022.

First, we address your arguments for the information not subject to section 552.022. 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates the information relates to the pending case and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You have provided an affidavit stating the Harris County District Attorney's Office (the "district attorney's office") objects to the disclosure of the information at issue because its release would interfere with an ongoing criminal case. The district attorney's office states the information at issue relates to a capital murder case in which a direct appeal of the conviction is pending. Based on this representation, we find release of the information at this time would interfere with the pending criminal prosecution. *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). Therefore, we conclude section 552.108(a)(1) of the Government Code is applicable to the information not subject section 552.022 of the Government Code.

However, 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; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the city may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.<sup>4</sup>

Next, we address your arguments for the court-filed documents. You assert the court-filed documents subject to section 552.022 of the Government Code are excepted from disclosure under section 411.153 of the Government Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information protected by other statutes. Gov't Code § 552.101. Section 552.101 encompasses section 411.153 of the Government Code, which provides:

- (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.
- (b) A person commits an offense if the person knowingly discloses to an unauthorized recipient information in a DNA record or information related to a DNA analysis of a sample collected under this subchapter.
- (c) An offense under this section is a state jail felony.
- (d) A violation under this section constitutes official misconduct.

Gov't Code § 411.153. A “DNA record” means the results of a forensic DNA analysis performed by a DNA laboratory. See *id.* § 411.141(6), (7). “Forensic analysis” is defined as “a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.” See *Crim. Proc. Code art. 38.35(4)*; see also *Gov't Code § 411.141(10)* (providing that “forensic analysis” has meaning assigned by *Crim. Proc. Code art. 38.35*). A “DNA database” means “one or more databases that contain forensic DNA records maintained by the director [of the Department of Public Safety (“DPS”)].” *Gov't Code § 411.141(5)*; see *id.* § 411.001(3).

---

<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

The director of DPS is required to establish certain procedures for DNA laboratories. *See id.* §§ 411.144(a), .142(h) (requiring director to establish standards for DNA analysis). Section 411.144 of the Government Code provides that a DNA laboratory conducting a forensic DNA analysis under subchapter G of chapter 411 shall comply with subchapter G and the rules adopted under subchapter G. *See id.* § 411.144(d); 37 T.A.C § 28.82. The director of DPS has adopted rules that govern the regulation of forensic DNA laboratories in this state. *See* 37 T.A.C. §§ 28.81, .82 (describing minimum standards by which a forensic DNA laboratory must abide); *see also* Gov't Code § 411.147(b). The director of DPS may release a DNA record in certain instances, including to a criminal justice agency for criminal justice or law enforcement purposes. *See* Gov't Code § 411.147(c).

Upon review, we find none of the information at issue constitutes DNA records relating to DNA analyses of samples collected under subchapter G of chapter 411 of the Government Code. Thus, we conclude the city may not withhold any portion of the court documents under section 552.101 of the Government Code in conjunction with section 411.153 of the Government Code.

In summary, with the exception of basic information and the marked court-filed documents, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The basic information and the marked court-filed documents must be released.

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 479965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)