



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2013

Mr. Matthew B. Cross
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901-1196

OR2013-04089

Dear Mr. Cross:

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# 484811.

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. You state the department has released some of the requested information but claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a press release which the department seeks to withhold under section 552.108 of the Government Code. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further public disclosure unless release of the information is prohibited by law or the information is confidential under law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989). Section 552.108 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), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, because the department has previously made the submitted press release, which we have marked, available to the public, it may not be withheld under section 552.108 and must be released pursuant to section 552.0007 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the remaining information.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(2).¹

In summary, the department must release the press release we have marked pursuant to section 552.007 of the Government Code. With the exception of the basic front-page offense and arrest information, the department may withhold the remaining information 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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

¹As our ruling is dispositive, we do not address your other argument to withhold this information.

Ref: ID# 484811

Enc. Submitted documents

cc: Requestor
(w/o enclosures)