



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2013

Ms. Stephanie Berry
Assistant City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2013-12541

Dear Ms. Berry:

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# 498591.

The Denton Police Department (the "department") received a request for information related to a specified motor vehicle accident. You state some responsive information is being made available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information includes a court document. 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 expressly confidential under the Act or other law. Gov't Code § 552.022(a)(17). Thus, the court document we have marked is subject to disclosure under section 552.022(a)(17). Although you seek to withhold the court document under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *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. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 177 at 3 (1977)

(statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for purposes of section 552.022(a)(17). Therefore, the court document may not be withheld under section 552.103 or section 552.108 of the Government Code but must instead be released pursuant to section 552.022(a)(17) of the Government Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note the information at issue includes a statutory warning, form DIC-24, and a notice of suspension, form DIC-25. Because copies of those forms were provided to the person who is the subject of the warning and the notice, we find release of the statutory warning and notice of suspension will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the department may not withhold the statutory warning or notice of suspension under section 552.108 of the Government Code.

You state release of the remaining information would interfere with a pending criminal case. Based on your representation, we find release of the remaining 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We also note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Except for basic information, the statutory warning, and the notice of suspension, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

Lastly, we note the statutory warning and notice of suspension contain the arrested person’s driver’s license information. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit

¹As our ruling is dispositive, we do not address your remaining claim except to note that basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

issued by an agency of this state or another state or country.² See Gov't Code § 552.130(a)(1). The department must withhold the information we have marked in the statutory warning and the notice of suspension under section 552.130 of the Government Code.³

In summary, the department must release the marked court document pursuant to section 552.022(a)(17) of the Government Code. The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for the statutory warning, the notice of suspension, and basic information under section 552.108(c). In releasing basic information, the statutory warning and the notice of suspension, the department must withhold the information we have marked under section 552.130 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

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²This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to 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 Gov't Code § 552.130(d), (e).

Ref: ID# 498591

Enc. Submitted documents

c: Requestor
(w/o enclosures)