



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

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

OR2013-13124

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# 499495.

The Austin Police Department (the "department") received four requests for information pertaining to the arrest of a named individual.¹ You state the department has released copies of an arrest warrant and arrest warrant affidavit to the requestors. 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 includes a search warrant that is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹We note the department sought and received clarification of the information requested by one of the requestors. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

...
(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The court-filed search warrant is subject to subsection 552.022(a)(17), and must be released unless it is made confidential under the Act or other law. *See id.* Although you raise section 552.108 of the Government Code for this information, we note section 552.108 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the marked search warrant may not be withheld under section 552.108 of the Government Code. As no other exceptions against release of the search warrant are raised, 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). A governmental body claiming section 552.108(a)(1) 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 a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987).* Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the information at issue relates to a pending prosecution by the Comal County District Attorney's Office (the “district attorney's office”). You provide us with documentation from the district attorney's office objecting to the release of the information at issue. The district attorney's office states release of the information would interfere with its ongoing investigation and prosecution of the crime at issue. Based on these representations, 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) 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*. 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 department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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 basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 499495

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)