



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2013

Ms. Michele Freeland  
Legal Assistant  
Office of General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2013-18297

Dear Ms. Freeland:

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# 502922 (PIR# 13-3022).

The Texas Department of Public Safety (the "department") received a request for the personnel records of a named department officer and all incident or arrest reports "written or sponsored" by the same officer thirty days before and after a specified arrest.<sup>1</sup> You indicate the department will release some responsive information to the requestor. 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.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why

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<sup>1</sup>We note the requestor excluded the officer's social security number and home address from the request.

the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You assert the submitted information relates to an ongoing criminal case resulting from the specified arrest and release of the information would interfere with the investigation and prosecution of the case. Based on these representations, we find the department has demonstrated that release of the submitted information pertaining to the specified arrest 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is generally applicable to the information related to the specified arrest, which we have marked. However, we find that you have failed to demonstrate how the remaining information pertains to ongoing criminal investigations or prosecutions, nor have you explained how its release would interfere with the detection, investigation, or prosecution of crime; thus you have not met your burden under section 552.108(a)(1) for the remaining information. Therefore, none of the remaining reports may be withheld under section 552.108(a)(1) of the Government Code.

We note 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Basic information must be released, even if it does not literally appear on the front page of the report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the department may withhold the information pertaining to the specified arrest, which we have marked, under section 552.108(a)(1) of the Government Code.

We note some of the remaining information is subject to section 552.101 of the Government Code.<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find one of the remaining reports consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of ch. 261 of Fam. Code); *see also id.* § 101.003(a) (defining “child” for purposes of ch. 261 of Fam. Code). As you have not indicated the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, the information we have marked is confidential under section 261.201(a) of the Family Code. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.<sup>3</sup>

We note the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, with the exception of basic information, the department may withhold the information pertaining to the specified arrest, which we have marked, under section 552.108(a)(1) of the Government Code. The department must withhold the

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<sup>3</sup>We note section 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 id.* § 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).

information we have marked under (1) section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and (2) section 552.130 of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must release the remaining submitted information.<sup>4</sup>

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](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

CN/dls

Ref: ID# 502922

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information subject to release contains social security numbers. 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 a decision from this office. *See* Gov't Code § 552.147(b).