



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2013

Ms. Amy Dunham
County Attorney's Office
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2013-20787

Dear Ms. Dunham:

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# 507163.

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to a specified case. You state the sheriff's office will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The signed Magistrate's Order for Emergency Protection, which we have marked, is subject to section 552.022(a)(17)

¹Section 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 under the Act. Gov't Code § 552.147(b).

²Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

and must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the sheriff's office may not withhold the information subject to section 552.022 under section 552.108. However, we note some of the information at issue is subject to section 552.130 of the Government Code.³ Because section 552.130 makes information confidential under the Act, we will consider the applicability of this exception to the information at issue. We will also consider your argument under section 552.108 for the information that is not subject to section 552.022.

Section 552.108 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 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). You state the submitted information relates to a pending criminal investigation and prosecution. We note, however, the submitted information includes a criminal trespass warning. Because a copy of this document is provided to the person who is the subject of the warning, we find its release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Therefore, the sheriff's office may not withhold the criminal trespass warning, which we have marked for release, under section 552.108. However, based on your representation, we conclude 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) of the Government Code is applicable to the remaining information.

As you acknowledge, 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 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the criminal trespass warning and basic information, which the sheriff's office must release, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note portions of the Magistrate's Order for Emergency Protection and the criminal trespass warning are subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We find the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must release the information we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the criminal trespass warning and the basic information, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the Magistrate's Order for Emergency Protection and the criminal trespass warning, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/akg

Ref: ID# 507163

Enc. Submitted documents

c: Requestor
(w/o enclosures)