



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2014

Mr. Daniel Ortiz  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-09136

Dear Mr. Ortiz:

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# 529169.

The City of El Paso (the "city") received a request for all information pertaining to a specified incident. You inform us you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions 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) 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:

...

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<sup>1</sup>Although you also raised section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn it. See Gov't Code §§ 552.301, .302.

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

Gov't Code § 552.022(a)(17). The submitted information contains search warrants and search warrant returns that were filed with a court. These court-filed documents, which we have marked, are subject to subsection 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold the information subject to subsection 552.022(a)(17) under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *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 Gov't Code § 552.103); *see also* 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 submitted search warrants and search warrant returns may not be withheld under section 552.103 or 552.108 of the Government Code. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.130 to the information at issue.<sup>2</sup>

The search warrants and search warrant returns contain information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). The city must withhold the information we have marked in the search warrants and search warrant returns under section 552.130 of the Government Code. The remainder of the documents subject to section 552.022(a)(17) must be released.

Next, we address your argument against the disclosure of the remaining 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[.]” *Id.* § 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). You state the remaining information relates to a pending criminal investigation and prosecution. Based on this representation, we conclude the release of this 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per*

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<sup>2</sup>The 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).

*curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

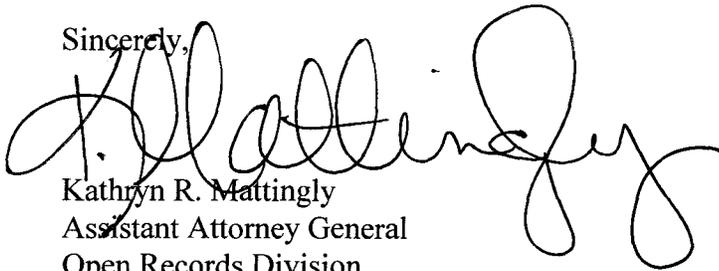
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See *Houston Chronicle*, 531 S.W.2d at 186-88. The city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, with the exception of the information we have marked under section 552.130 of the Government Code, the submitted search warrants and search warrant returns must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information, the city may withhold the remaining information under section 552.108(a)(1) 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure under section 552.103 of the Government Code, except to note basic information is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

Ref: ID# 529169

Enc. Submitted documents

c: Requestor  
(w/o enclosures)