



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2014

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-10334

Dear Ms. Cost:

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# 526013 (DPS PIR #14-1247).

The Texas Department of Public Safety (the "department") received a request for a specified incident report and a specified probable cause affidavit. You state you have released some information to the requestor. You indicate you will redact certain motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and certain information pursuant to the previous determination issued in Open Records Letter No. 2001-2047 (2001).¹ 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, you indicate a portion of the submitted information is not responsive to the present request because it does not pertain to any of the requested information. This ruling does not

¹Section 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 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 id.* § 552.130(d), (e). 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 id.* § 552.147(b). Open Records Letter No. 2001-2047 authorizes the department to withhold CHRI maintained under section 411.083 of the Government Code without the necessity of requesting an attorney general decision. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations).

address the public availability of the non-responsive information, which you have indicated, and the department need not release it in response to this request.

Next, you state the information you have marked was previously released in response to earlier requests. However, you state, and provide supporting documentation showing, the Ector County District Attorney's Office now seeks to withhold the information you have marked under section 552.108 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information, which you have marked, unless its release is expressly prohibited by law or the information is confidential under law. Because section 552.108 does not prohibit the release of information or make information confidential, the department may not now withhold any previously released information under this exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Thus, the department may not now withhold any of the previously released information, which you have marked, under section 552.108. However, we will address your argument under section 552.108 for the submitted information that was not previously released.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 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 information you have marked that has not been previously released relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information at issue 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). Therefore, the department may withhold the information you have marked that has not been previously released under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 526013

Enc. Submitted documents

c: Requestor
(w/o enclosures)