



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Mr. William Schultz
Assistant District Attorney
Denton County Criminal District Attorney's Office
1450 East McKinney Street, Suite 3100
Denton, Texas 76209

OR2014-18202

Dear Mr. William Schultz:

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# 538925.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for the police report pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks information pertaining to a specified incident. You have submitted information pertaining to an incident not specified in the present request. Accordingly, the submitted information which does not pertain to the specified incident, which we have marked, is not responsive to the instant request. The district attorney's office need not release non-responsive information in response to this request, and this ruling will not address that information.

You argue the responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 36.03 of the Code of Criminal Procedure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception

encompasses information that other statutes make confidential. Article 36.03 provides in pertinent part:

(a) Notwithstanding Rule 614, Texas Rules of Evidence, a court at the request of a party may order the exclusion of a witness who for the purposes of the prosecution is a victim, close relative of a deceased victim, or guardian of a victim only if the witness is to testify and the court determines that the testimony of the witness would be materially affected if the witness hears other testimony at the trial.

Crim. Proc. Code art. 36.03(a). This office has determined to fall within section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Article 36.03 provides for the exclusion of certain witnesses from the court room during a trial in certain instances. *See* Crim. Proc. Code art. 36.03. However, article 36.03 does not make information expressly confidential for purposes of the Act. Accordingly, the district attorney's office may not withhold any of the responsive information under section 552.101 in conjunction with article 36.03 of the Code of Criminal Procedure.

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 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 case which is pending. Based on your representation and our review, we find release of the responsive 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the responsive information.

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). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-87. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes an arrestee's social security number, but does not include motor vehicle record information subject to section 552.130 of the Government Code. *See* ORD 127. Thus, with the exception of basic information, the

district attorney's office may withhold the responsive information under section 552.108(a)(1) of the Government Code.

Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Accordingly, the district attorney's office may withhold the arrestee's social security number in the basic information under section 552.147 of the Government Code.

In summary, with the exception of basic information, the district attorney's office may withhold the responsive information under section 552.108(a)(1) of the Government Code. The district attorney's office may withhold the arrestee's social security number in the basic information under section 552.147 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, 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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/eb

Ref: ID# 538925

Enc. Submitted documents

c: Requestor
(w/o enclosures)