



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-01908

Dear Mr. Trevino:

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# 595327 (Fort Worth PIR No. W046847).

The Fort Worth Police Department (the "department") received a request for several categories of information pertaining to a specified incident. You state you will release some information to the requestor. Additionally, you state 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 information under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ You also state the department will redact the originating telephone number of a 9-1-1 caller under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code and certain information subject to section 411.083 of the Government Code pursuant to the previous determinations issued to

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

the department in Open Records Letter Nos. 2011-15641 (2011) and 2013-22304 (2013).² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the submitted information includes court-filed search warrants and magistrate's warnings. Section 552.022(a)(17) of the Government Code provides for 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). Although you raise section 552.108 of the Government Code for the entirety of the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Record Decision Nos.177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Furthermore, although the department claims a portion of the information subject to section 552.022(a)(17) is protected by common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the department may not withhold the court-filed documents under section 552.108 of the Government Code or common-law privacy. As the department has not claimed any other exceptions to disclosure for this information, the department must release the submitted search warrants and magistrate's warnings.

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 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

²Open Records Letter No. 2011-15641 is a previous determinations issued to the department authorizing the department to withhold the originating telephone numbers of 9-1-1 callers furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. Open Records Letter No. 2013-22304 is a previous determination issued to the department authorizing the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

state the remaining information pertains to an open and pending criminal investigation with the department. Based on your representation, we conclude the 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). Therefore, we agree section 552.108(a)(1) is applicable to the information at issue.

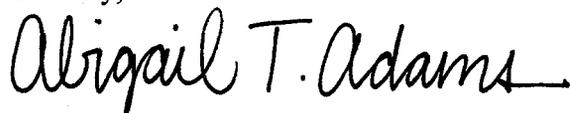
However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186-87. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the department must release the submitted search warrants and magistrate's warnings pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the department 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, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

⁴As our ruling is dispositive, we do not address the department's remaining arguments against disclosure of the information at issue.

Ref: ID# 595327

Enc. Submitted documents

c: Requestor
(w/o enclosures)