



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2016

Mr. Edward A. Sandoval
Assistant District Attorney
County of Cameron
964 East Harrison Street
Brownsville, Texas 78520

OR2016-09457

Dear Mr. Sandoval:

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# 607783.

The Cameron County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes court-filed documents. 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 the information is

¹Although 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 Therefore, we assume you have withdrawn your claim this section applies to the requested information. *See* Gov't Code §§ 552.301, .302.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). The district attorney's office seeks to withhold the information at issue under sections 552.103 and 552.108 of the Government Code. However, these are discretionary exceptions to disclosure that protect a governmental body's interests 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 section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents, which we have indicated, under section 552.103 or section 552.108. However, because sections 552.130 and 552.137 of the Government Code make information confidential for purposes of section 552.022, we will address their applicability to the court-filed documents subject to section 552.022(a)(17).³ Further, we will consider the remaining arguments against disclosure of the information not subject to section 552.022.

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). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state the submitted information pertains to a criminal investigation that is pending with the Texas Department of Public Safety (the “department”). You inform us the department objects to release of the information at issue because its release would interfere with the pending investigation. Based on your representations, 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, 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*. *See* 531 S.W.2d at 186-88; Open

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, an arrestee's social security number and home address, but does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of the basic information, which must be released, the district attorney's office may withhold the remaining information on behalf of the department under section 552.108(a)(1) of the Government Code.⁴

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1). Thus, to the extent the individuals at issue are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b), the district attorney's office must withhold the information we have indicated under section 552.1175. Conversely, if the individuals at issue are not licensed peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the district attorney's office may not withhold this information under section 552.1175 of the Government Code.⁵

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district attorney's office must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

⁴As we are able to resolve this issue under section 552.108, we do not address your remaining claim against disclosure of the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

⁵Regardless of the applicability of section 552.1175 of the Government Code, we note 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* Gov't Code § 552.147(b).

In summary, the district attorney's office must release the court-filed documents we have indicated under section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, to the extent the individuals at issue are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b), the district attorney's office must withhold the information we have indicated under section 552.1175. In releasing the court-filed documents, the district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 607783

Enc. Submitted documents

c: Requestor
(w/o enclosures)