



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 5, 2016

Mr. J. Eric Magee  
Counsel for Milam County Sheriff's Office  
Allison, Bass & Magee, L.L.P.  
402 West 12<sup>th</sup> Street  
Austin, Texas 78701

OR2016-22499

Dear Mr. Magee:

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# 630079.

The Milam County Sheriff's Office (the "sheriff's office") received a request for twenty-seven categories of information regarding a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to categories 15-27 of the request. We assume the sheriff's office has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the request was received. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

Furthermore, we note the submitted information includes an officer's return of inventory, a judgment of conviction by court, a search warrant, and an order for assistance in execution of search warrant, which are subject to section 552.022 of the Government Code.

Section 552.022(a)(17) provides for the 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 sections 552.103 and 552.108 of the Government Code, these are discretionary exceptions 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); 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 section 552.108 subject to waiver). Accordingly, the sheriff’s office may not withhold these court-filed documents under section 552.103 or section 552.108. As you raise no further exceptions to disclosure for this information, the sheriff’s office must release the submitted officer’s return of inventory, judgment of conviction by court, search warrant, and order for assistance in execution of search warrant pursuant to section 552.022 of the Government Code. We will address your claims under sections 552.103 and 552.108 for the information not subject to section 552.022(a)(17).

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 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 submitted information pertains to an active criminal prosecution, which is currently on appeal. Based on your representation and our review, 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976). Thus, with the exception of basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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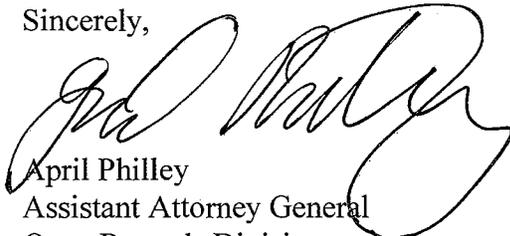
<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure. We note that basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991). Therefore we do not address your section 552.103 argument for the remaining information.

In summary, the sheriff's office must release the officer's return of inventory, the judgment of conviction by court, the search warrant, and the order for assistance in execution of search warrant in accordance with section 552.022 of the Government Code. With the exception of the basic information, which must be released, the sheriff's office 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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/akg

Ref: ID# 630079

Enc. Submitted documents

c: Requestor  
(w/o enclosures)