



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Ms. Linda A. Samples
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-02890

Dear Ms. Samples:

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# 597322 (City Case #15-1026-6853).

The El Paso Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a search warrant and an order for assistance in execution of search warrant signed by a magistrate that is subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the

¹Although you raise section 552.101 of the Government Code in conjunction with constitutional privacy generally, you make no arguments to support this doctrine. Therefore, we assume you have withdrawn your claim section 552.101 in conjunction with constitutional privacy applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; 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 Gov't Code § 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we have indicated, under section 552.108. You also seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the information subject to section 552.022(a)(17) may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions against disclosure are raised, the court-filed documents, which we have indicated, must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider the arguments against disclosure of the remaining 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 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 remaining information not subject to section 552.022 of the Government Code pertains to a pending criminal investigation. Based upon your representation and our review, we conclude that 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 information at issue.

However, we note, and you acknowledge, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other things, a detailed description of the offense. *See* ORD 127 at 3-4. We also note basic information does not include dates of birth. *See id.* Thus, with the exception of basic information, which you state you have released, the

department may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.108(a)(1) of the Government Code.²

In summary, the department must release the court-filed documents we have indicated pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 597322

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.