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ATTORNEY GENERAL OF TEXAS

July 1, 2016

Mr. L. Brian Narvaez
Counsel for the Town of Prosper
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2016-15136

Dear Mr. Narvaez:

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# 616758 (ID# 2016-150).

The Town of Prosper (the "town"), which you represent, received a request for information pertaining to a specified incident. The town states it will redact information pursuant to section 552.130 of the Government Code.¹ The town claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the town claims and reviewed the submitted information.

Initially, we note the submitted information contains a search warrant 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. Gov't Code § 552.022(a)(17). Although the town seeks to withhold this information under section 552.108 of the 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

¹We note section 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).

discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the town may not withhold the court-filed document, which we marked, under section 552.108. As no other exceptions are raised, the court-filed document, which we have marked, must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your argument under section 552.108 for the remaining information not subject to section 552.022 of the Government Code.

Next, we address your contention that article 15.26 of the Code of Criminal Procedure does not make the submitted arrest warrant affidavits maintained by the town's police department expressly public. Article 15.26 of the Code of Criminal Procedure Provides in relevant part:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Accordingly, article 15.26 does not make the submitted arrests affidavits maintained by the town's police department expressly public. Accordingly, we will address your argument under section 552.108 for the submitted arrest warrant affidavits, as well as the remaining information not subject to section 552.022 of the Government Code.

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). The town states the remaining information relates to an open and pending criminal prosecution and release of the information would interfere with that prosecution. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code 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. 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 Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front-page offense and arrest

information, the town may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the town must release the court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic front-page offense and arrest information, the town 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bw

Ref: ID# 616758

Enc. Submitted documents

c: Requestor
(w/o enclosures)