



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2017

Ms. Kelley K. Messer
First Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2017-04906

Dear Ms. Messer:

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# 648861.

The Abilene Police Department and the City of Abilene (collectively, the "city") each received a request for a specified autopsy report and all information relating to a specified investigation. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents, 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 the city raises section 552.108 of the Government Code for this information, this exception is discretionary in nature and does 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). However, as section 552.130 of the Government Code

makes information confidential for purposes of section 552.022(a)(17), we will address the applicability of section 552.130 for the marked court-filed documents.¹

Next, we address your arguments under section 552.108 of the Government for the remaining information not subject to section 552.022 of the Government Code. Section 552.108 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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an ongoing criminal investigation. Based upon your representation and our review, we find section 552.108(a)(1) is applicable to the remaining information. *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).

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 Publishing Co.* *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, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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. Upon review, we find the court-filed documents contain motor vehicle record information subject to section 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, with the exception of the information we marked subject to section 552.022(a)(17) of the Government Code and the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022(a)(17) of the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Code, the city must withhold the motor vehicle record information we marked under section 552.130 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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 648861

Enc. Submitted documents

c: Requestor
(w/o enclosures)