



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-08331

Dear Ms. Freeland:

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# 653980 (Ref. No. 17-0706).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information contains 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court-filed documents we have marked are subject to section 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that may be waived and does not make information confidential under the Act. *See* 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

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

waiver), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the department may not withhold the marked court-filed documents under section 552.108. However, because section 552.1175 of the Government Code makes information confidential for purposes of section 552.022, we will address the applicability of this section to the court-filed documents. Further, we will address the department's arguments against disclosure of the submitted information not subject to section 552.022.

Section 552.108(a) 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: (1) 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 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 not subject to section 552.022 relates to an ongoing investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation, 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 submitted information not subject to section 552.022.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the submitted information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

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[.]” *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent the portions of the remaining information we have marked relate to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the marked April 18, 2017 information under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. If the individual whose information is at issue are not currently a licensed

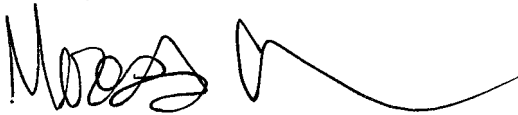
peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175. In addition, we conclude section 552.1175 of the Government Code is not applicable to any of the remaining portions of the information at issue, and the department may not withhold it on that ground.

In summary, with the exception of basic information and the information subject to section 552.022 of the Government Code, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. To the extent the portions of the remaining information we have marked relate to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the marked information under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. The department must release any remaining basic information and any remaining portions of the information subject to section 552.022.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping underline.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/bw

Ref: ID# 653980

Enc. Submitted documents

c: Requestor  
(w/o enclosures)