



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2017

Ms. Kia Boone
Deputy City Clerk
Office of City Clerk
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2017-13134

Dear Ms. Boone:

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# 661892 (City ID# 246).

The City of Wichita Falls (the "city") received a request for a specified video recording and specified incident reports. You state you have released some information. 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 a court-filed document, 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* 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). As such section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the court-filed document we have indicated may not be withheld under section 552.108. As no further exceptions to disclosure have been raised for this information, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your argument under section 552.108 to 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). 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 remaining information in report number 17-020660 relates to a pending criminal investigation. Based upon your representation and our review, we find section 552.108(a)(1) is applicable to the information at issue. *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).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state report number 15-050070 pertains to a case that concluded in a result other than a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to report number 15-050070.

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* 531 S.W.2d at 186-88; *see also* 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 you state you have released, the city may withhold the remaining information in report number 17-020660 under section 552.108(a)(1) of the Government Code and report number 15-050070 under section 552.108(a)(2) of the Government Code.

In summary, with the exception of basic information, which you state you have released, the city may withhold the information not subject to section 552.022 in report number 17-020660 under section 552.108(a)(1) of the Government Code and report number 15-050070 under section 552.108(a)(2) of the Government Code. The remaining information must be released.¹

¹The information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'Jahna Ward', with a stylized flourish at the end.

Jahna Ward
Attorney
Open Records Division

JW/som

Ref: ID# 661892

Enc. Submitted documents

c: Requestor
(w/o enclosures)