



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 13, 2019

Ms. Erin Ham
Deputy City Clerk
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2019-31962

Dear Ms. Ham:

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# 796859 (City ID# 819).

The Wichita Falls Police Department (the "department") received a request for police records for a specified address during a specified date range. You state the department has 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 contains a court-filed document 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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for the submitted court-filed document, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(17), which we marked, under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this information, the department must release the court-filed document pursuant to section 552.022(a)(17) of the Government Code. However, we will

consider your arguments against disclosure of the information not subject to section 552.022(a)(17).

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). You state report numbers 19-030767, 19-040919, 19-041104, 19-060720, and 19-081218 pertain to active criminal investigations or prosecutions. Based on 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 report numbers 19-030767, 19-040919, 19-041104, 19-060720, and 19-081218.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 19-030766 pertains to a closed case that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to report number 19-030766.

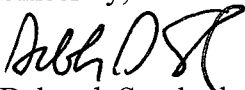
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold report numbers 19-030767, 19-040919, 19-041104, 19-060720, and 19-081218 under section 552.108(a)(1) of the Government Code and report number 19-030766 under section 552.108(a)(2) of the Government Code.

In summary, the department must release the submitted court-filed document, which we marked, pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the department may withhold report numbers 19-030767, 19-040919, 19-041104, 19-060720, and 19-081218 under section 552.108(a)(1) of the Government Code and report number 19-030766 under section 552.108(a)(2) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Attorney
Open Records Division

DS/mo

Ref: ID# 796859

Enc. Submitted documents

c: Requestor
(w/o enclosures)