



January 24, 2000

Mr. Duncan R. Fox
Assistant Chief
Legal Services
Texas Department of Public Safety
5805 N. Lamar Boulevard
Box 4087
Austin, Texas 78773-0001

OR2000-0223

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131393.

The Texas Department of Public Safety (the “department”) received a request for various information concerning a certain arrest for driving while intoxicated and for information about the arresting officer. You assert that the requested information is excepted from disclosure based on sections 552.103 and 552.108 of the Government Code. You have submitted to this office a representative sample of the requested information.¹

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You inform us that the driving while intoxicated case is pending. We therefore believe that the release of the information about the arrest “would interfere with the detection, investigation,

¹In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

or prosecution of crime.” *Id.* However, section 552.108 is inapplicable to the information about the arresting officer.

Section 552.108 also is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Additionally, section 552.103 is inapplicable to information held to be public in the *Houston Chronicle* case. See Open Records Decision Nos 597 (1991), 362 (1983). Thus, with the exception of the basic front page offense and arrest information, you may withhold from disclosure the records about the offense based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

Section 5525.103 of the Government Code excepts from disclosure information that relates to pending or reasonably anticipated litigation to which the governmental body is a party. In this instance, the department would not be a party to the criminal litigation. Section 552.103 applies to the information about the arresting officer if the prosecution is pending and the district attorney asserts a litigation interest in the information. See Open Records Decision Nos. 469 (1987). Here, we have no representation that the district attorney has a prosecutorial interest in the information about the arresting officer. Accordingly, the department may not withhold the information about the arresting officer from the requestor based on section 552.103 of the Government Code.

The records about the arresting officer include information that the department must withhold from disclosure under other exceptions in the Act. Section 552.117 reads in pertinent part as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioner under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024;

We have marked the information the department must withhold based on section 552.117.

Section 552.130 of the Government Code provides as follows

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

We do not believe that subsection (b) authorizes the release of the information described in subsection (a). Thus, we have marked the information the department must withhold from disclosure based on section 552.130.

Finally, the officer records in part include private financial information. The department must not release this information. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see* Open Records Decision No. 600 (1992). We have marked the documents accordingly.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/ljp

Ref.: ID# 131393

encl. Marked documents

cc: Mr. William C. Martin
1901 Cervin Boulevard
Austin, Texas 78728
(w/o enclosures)