OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 5, 2000

Mr. Wyman Hopkins
Administrative Sergeant
City of Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-1313

Dear Sergeant Hopkins:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133833.

The Rosenberg Police Department (the "department") received a request for a specified incident report. You have submitted a copy of the requested report for our review. You claim that the requested report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108, the "law enforcement" exception, provides in relevant part:

> (a) 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:
>
> (1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]
>
> (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subdivisions 552.108(a)(1) and 552.108(a)(2) apply to two mutually exclusive types of information held by a law enforcement agency. Section 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you state that "[t]he respective case . . . investigation has been concluded, but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication against any person." Our review of the submitted report reveals, however, that the status of this case is "inactive," as opposed to having been "closed" permanently. Nevertheless, based on your representation that the department has concluded its investigation and our review of the report, this office concludes that the department may withhold most of the information at issue pursuant to section 552.108(a)(2).

We note, however, that section 552.108 does not except from required public 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 front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company 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). The department must release basic front-page information, even if it does not literally appear on the front page of the responsive police report. *See* Gov't Code § 552.108(c); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Finally, we also note that the basic information that must be released pursuant to section 552.108(c) does not include the identification and description of an eyewitness. *See* Open Records Decision No. 181 at 4 (1977).

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 Department 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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 133833

Encl. Submitted documents

cc: Mr. Allen Van Slyke
500 Morton Street
Richmond, Texas 77469
(w/o enclosures)