



April 13, 2000

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2000-1474

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135592.

The Comptroller of Public Accounts (the “comptroller”) received a request for “all information regarding the reasons that the sales tax and mixed beverage audits are being performed on Eagle Adventures, Inc., including but not limited to the name of the person and/or entity that requested the audit be performed.” You have provided for our review information that is responsive to the request. You assert that the requested information is excepted from public disclosure under section 552.108 of the Government Code. We have reviewed the submitted information and considered the exception you assert.

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). In *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995), the Texas Supreme Court held that the comptroller could withhold from disclosure audit papers pursuant to section 552.108 to protect the comptroller’s interest in enforcing the tax laws. *Id.* at 677. You inform us that the requested information pertains to an ongoing audit. We therefore believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108.

However, section 552.108 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the requestor specifically requested the "name of the person and/or entity that requested the audit be performed." We understand this to be a request for the identity of the complainant. The identification and description of the complainant is among the types of information that comprises "basic front page offense and arrest information" and that is therefore not excepted from disclosure under section 552.108. See Open Records Decision No. 127 at 4 (1976) (summarizing the types of information held to be public in *Houston Chronicle*). As you have asserted no other exception for withholding the identity of the complainant, you must release this information to the requestor. We additionally 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.

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.

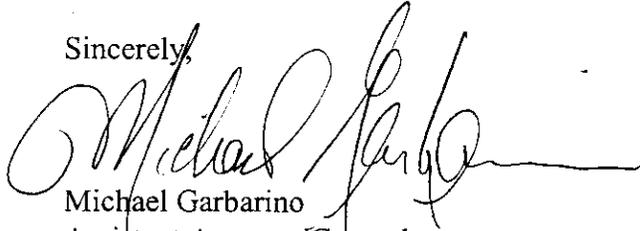
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ch

Ref: ID# 135592

Encl. Submitted documents

cc: Mr. Gerrit M. Pronske  
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(w/o enclosures)