



September 15, 2000

Ms. Stacy Jameson Anderson
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2000-3571

Dear Ms. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#140525.

The College Station Police Department (the “department”) received a request for any and all photographs taken by the department during the investigation of a March 3, 2000 fatality vehicle accident. You inform us that these same photographs were part of the information at issue in a prior ruling from this office, Open Records Letter No. 2000-1397 (2000), in which we excepted most of the requested information, including the photographs, from disclosure under subsection 552.108(a)(1) of the Government Code. However, you inform us that circumstances have changed with regard to the department’s investigation of the accident. Therefore, you are now asserting that the requested information is excepted from disclosure under subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, the “law enforcement exception,” provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (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; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You inform this office that the department has concluded its investigation into the March 3, 2000 incident, that the case is now closed and that no criminal charges will be filed in conjunction with the incident. As the photographs are “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,” we agree that the information falls within the scope of section 552.108(a)(2) of the Government Code. The requested information may therefore be withheld from the requestor. As we resolve your request under section 552.108(a)(2), we need not address your argument under section 552.108(b)(2).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/ljp

Ref: ID# 140525

Encl. Submitted documents

cc: Mr. Dennis D. Dement
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(w/o enclosures)