



January 8, 2001

Mr. Don Hatcher
Chief of Police
City of Leander
P.O. Box 319
Leander, Texas 78646-0319

OR2001-0063

Dear Mr. Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142931.

The Leander Police Department (the "department") received a request for all relevant information relating to an incident occurring on October 21, 2000, Case/Incident Number 18553/200769. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with section 261.201 of the Family Code, as well as under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that information provided to this office indicates that photographs were taken in this case of the victim and crime scene, and that an "incar" videotape was made as well. However, you did not submit any photographs or videotapes to this office in response to the request, and you inform us that you have not disclosed any information to the requestor. Therefore, any responsive photographs or videotapes are presumed public and must be released unless a compelling reason exists to withhold them from disclosure. *See* Gov't Code §§ 552.002 (defining public information); 552.301(e) and 552.302.¹ We will next address your claimed exceptions for withholding the submitted information.

¹You have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released under section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below. *See* also Gov't Code § 552.352.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Section 261.201 of the Family Code pertains to situations involving child abuse or neglect. Upon review of the submitted information, we conclude that the information at issue does not relate to a report of alleged or suspected abuse or neglect for purposes of section 261.201. Therefore, the submitted information may not be withheld under section 552.101 of the Government Code.

We next address your argument under section 552.108. Section 552.108, the “law enforcement exception,” provides in pertinent 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;

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that a police investigation is pending concerning the subject matter of the requested information. We therefore find that release of the requested information would interfere with the detection, investigation, or prosecution of crime and thus, it is excepted from disclosure under section 552.108(a)(1). *See 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) (court delineates law enforcement interests that are present in active cases).

However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle*; Open Records Decision No. 127 (1976). Thus, you must release basic information from the documents requested. In addition, we note that the submitted information contains documents that appear to have been filed in court. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, unless the court has sealed the documents, you must release the court-filed records in their entirety.

To summarize, the requested information may not be withheld under section 261.201 of the Family Code, in conjunction with section 552.101 of the Government Code. However, you may withhold the submitted information under section 552.108(a)(1) of the Government Code, with the exception of basic information and court filed documents. To the extent the city possesses photographs and videotapes that are responsive to the request, these must be released to the requestor, unless a compelling reason exists to withhold them from disclosure.

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 Hadassah Schloss at 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/seg

Ref: ID# 142931

Encl. Submitted documents

cc: Mr. Shawn Mulligan
3007 C Williams Drive
Georgetown, Texas 78628
(w/o enclosures)