



February 28, 2001

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
1201 Louisiana, 16th Floor
Houston, Texas 77002

OR2001-0750

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144542.

The Metropolitan Transit Authority ("Metro") received a written request for "the complete police investigation file and backup materials from the Metro investigation" of two named Metro employees. You contend that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . 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." The information at issue pertains to a criminal investigation conducted by the Metro Police Department (the "department") into certain alleged violations of section 37.10 of the Penal Code and section 550.024 of the Transportation Code. The department is a "law enforcement agency" for purposes of section 552.108 of the Government Code. *See* Transp. Code § 451.108. You have submitted evidence to this office that once the department completed its investigation, the matter was referred to the Harris County District Attorney, who, upon review of the investigation, declined to prosecute either of the alleged criminal violations. We therefore conclude that you have met your burden of demonstrating the applicability of section 552.108(a)(2) and that most of the information at issue therefore may be withheld.

However, 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). Because you have raised no other exception to disclosure, Metro must release these types of

information in accordance with *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); *see* Open Records Decision No. 127 (1976).

We note, however, that the Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Gov't Code § 552.022. Section 552.022(a) now states in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Two such categories of expressly public information under section 552.022(a) are "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," Gov't Code § 552.022(a)(3), and "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate." Gov't Code § 552.022(a)(5). Among the documents at issue are a restaurant receipt and two "Preliminary Estimates" for the repair of an automobile. Section 552.108 is a discretionary exception and not "other law" for purposes of section 552.022(a).¹ Moreover, we know of no other law that would make these three documents confidential. Accordingly, Metro must release these three documents in accordance with subsections 552.022(a)(3) and 552.022(a)(5), respectively.

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

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

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).

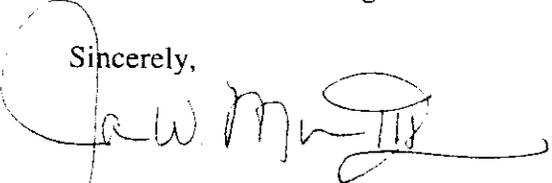
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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

JWM/RWP/seg

Ref: ID# 144542

Encl. Submitted documents

cc: Ms. Mary Flood
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