



May 4, 2001

Ms. Julie Gannaway  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2001-1834

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146784.

The Bryan Police Department (the "department") received a written request for "any and all electronic communications sent or received from all mobile computer equipped police patrol units" during specified hours and dates. You have submitted to this office as responsive to the request two sets of e-mail communications, and contend that the information at issue is excepted from disclosure under section 552.108 of the Government Code.

You claim that the requested e-mails "are internal records of the Bryan Police Department that contain law enforcement information that is *or could be* related to pending cases and cases that will not result in 'conviction or deferred adjudication' -- release of Bryan Police Department e-mails would interfere with the detection, investigation, and prosecution of crimes and should therefore be categorically excepted from public disclosure." (Emphasis added.) We infer from this statement that you contend that the requested information is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code.

The protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal

investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. However, you have not established that either of these exceptions apply to the records before us. The question of whether particular information is excepted from public disclosure under section 552.108 must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981) (discussing predecessor statute). Because you have not met your burden under section 552.108, we conclude that the department must release the two e-mail communications in their entirety.

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,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/RWP/seg

Ref: ID# 146784

Encl. Submitted documents

cc: Mr. Travis B. Bryan, III  
Youngkin, Catlin, Bryan, Stacy & Dillard  
P.O. Box 4629  
Bryan, Texas 77805  
(w/o enclosures)