OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 11, 2001

Mr. John Steiner
Division Chief
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767

OR2001-1931

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#147094.

The City of Austin Police Department (the "department") received a request for the 911 audio tape and police radio calls related to an incident involving a named Austin police officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit copies of any responsive police radio calls for our review. As you did not submit this information for our review, nor indicate that you seek to withhold it, we assume that you have released this information to the requestor. If you have not released any responsive police radio calls, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we address your assertion that the responsive 911 tape is excepted from disclosure under section 552.108 of the Government Code. 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). You inform us that the requested 911 audio tape pertains to a pending criminal investigation. Based on your representation, and having reviewed the information at issue, we conclude that you may withhold the requested 911 audio tape from disclosure under section 552.108(a)(1) of the Government Code.[1]

[1]As section 552.108 is dispositive of the information at issue, we need not address your other claimed exception.

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); Open Records Decision No. 216 (1978).

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,

Karen A. Èckerle
Assistant Attorney General
Open Records Division

KAE/er

Ref: ID# 147094

Encl: Submitted information

cc: Ms. Jamie Ortiz, Assistant Manager
Fox 7 News
119 East 10th Street
Austin, Texas 78701
(w/o enclosures)