OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 22, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-4773

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153712.

The Department of Public Safety (the "department") received a request for the investigative file for a specified fatality accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. You advise that the department will be releasing the accident report and the front page offense report information. We have considered the exception you claim and reviewed the submitted information.

We first note that the requestor indicated in a letter to this office, dated August 29, 2001, that he first made the instant request by electronic mail on July 26, 2001, and that the department failed to comply with section 552.301(b) of the Government Code by failing to seek an opinion from this office within ten business days after receiving the request. However, the materials sent by both the department and the requestor contain assertions by the department that it has no indication that it received the original request. Thus, we are faced with a factual dispute between the department and the requestor regarding whether the department complied with the requirement under section 552.301(b). We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the department's representations that it did not receive the original request, we conclude that the department has complied with the requirements of section 552.301(b).

Even if the department failed to timely submit its request as required by section 552.301, the need of another government body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 is a compelling reason that overcomes the presumption of openness. Open Records Decision No. 586 (1991). 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). The department has submitted a letter in which an assistant attorney general in the Prosecutor Assistance Division advises that the Office of the Attorney General is aiding in the investigation of the case, which is ongoing at this time, and that release of the information would interfere with the investigation. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

Thus, you may withhold the requested information. While section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime under section 552.108(c), we find based on your representations that you have released basic information relating to the offense.

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

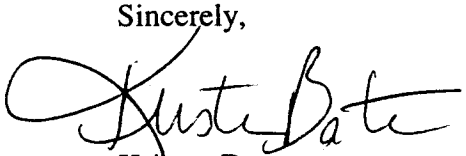
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 153712

Enc. Submitted documents

c: Mr. Carl Weeks
Weeks & Associate, L.L.C.
608 West 12th Street
Austin, Texas 78701
(w/o enclosures)