



January 18, 2002

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2002-0292

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157590.

The Tarrant County District Attorney (the "district attorney") received a request for information pertaining to cause number 0800425. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some portions of the submitted information that we have marked are subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

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

....

- (17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The marked section 552.022(a) information may only be withheld from disclosure to the extent that it is confidential under "other law." *See id.* You claim that the marked section 552.022 information is excepted from disclosure pursuant to section 552.108 of the Government Code. However, section 552.108 is a discretionary exception under the Public Information Act and do not constitute "other law" for purposes of section 552.022(a)(17).<sup>1</sup> Consequently, we do not address your section 552.108 claim with regard to this information. For the remainder of the submitted information, we will address your argument under section 552.108.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state, and you have submitted information indicating, that the requested information relates to a case that resulted in a dismissal by the district attorney due to insufficient evidence. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007. As we resolve your request under section 552.108, we need not address your arguments under sections 552.101 and 552.111.

To summarize, the district attorney must release the court-filed documents we have marked pursuant to section 552.022(a)(17). The district attorney must also release basic information. The remainder of the submitted information may be withheld from disclosure under section 552.108(a)(2).<sup>2</sup>

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<sup>1</sup> Discretionary 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)), 586 (1991) (governmental body may waive section 552.108), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

<sup>2</sup>We note that the information for which the district attorney makes arguments under section 552.101 and 552.111 does not encompass the court documents and basic information to be released.

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 Texas Building and Procurement 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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large initial "M".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 157590

Enc. Submitted documents

c: Mr. Ernest Asebedo, Jr.  
14701 Division Street  
San Antonio, Texas 78225  
(w/o enclosures)