



July 10, 2002

Mr. James J. Savage  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77001-1700

OR2002-3724

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165394.

The Harris County Constable Precinct 5 (the "Constable") received a request for a copy of various records in the case of State v. Monte D. Vincent, including the incident report, the state's file, a video tape, pictures of the truck, and transcript of the trial proceedings. The requestor also seeks a copy of various records of Deputy Lozano's investigation of Monte D. Vincent for impersonating a public servant, including copies of the grand jury file, "court document(s)/court orders giving [Deputy] Lozano permission to conduct such criminal investigation, . . . search the truck, and to video the truck," statements and reported dates of the wrecker drivers, and the video of CD Lozano videoing the truck at North Bingle Auto. The requestor also asks two questions. You state that the Constable will release to the requestor the front page information in the requested incident report and the call slip. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108 and 552.111 of the Government Code. You also maintain that the Constable does not possess portions of the requested information. We have considered the exceptions you claim and reviewed the submitted information.

You represent that the Constable has no information responsive to the request for the state's file, the videotape of Mr. Vincent made by Deputy Lozano, pictures of the truck, the transcript of the trial proceedings, or the grand jury file. The Public Information Act (the "Act") applies to information that is collected, assembled, or maintained by a governmental body or for a governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a). The Act does not require a governmental body to obtain or create information in response to a request. Based on your representations, we find that the Constable need not respond to the request for the state's file, the videotape, pictures of the truck, the transcript of the trial proceedings, and the grand jury file.

You state that the request for “copies of the court documents(s)/court orders giving [Deputy] Lozano permission to conduct such criminal investigation, . . . to search the truck, and to video the truck” is unclear and cite to various statutes that define the duties of peace officers. The Act permits a governmental body to ask the requestor to clarify the request if what information is requested is unclear. Gov’t Code § 552.222(b). Thus, we advise you to seek clarification from the requestor with regard to this portion of the request.

As for the requested incident report, you raise section 552.108(a)(2). However, we believe that this report is deemed confidential by law and, consequently, must be withheld from disclosure based on section 552.101 of the Government Code. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The offense report at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested offense report is confidential pursuant to section 58.007(c) of the Family Code. You must withhold the report from disclosure under section 552.101 of the Government Code.

You raise section 552.108(a)(1) for the wrecker drivers’ statements, which you have submitted to this office, and for information responsive to the question about the procedures and requirements for towing vehicles, an email and a county ordinance, both of which you have also submitted to this office. You have additionally submitted to this office information relating to internal affairs investigations in a three-ring binder. However, we do not read the request as encompassing this information and consequently, do not address the required public disclosure of the information in the three-ring binder.

The ordinance is subject to section 552.022 of the Government Code and, thus, cannot be withheld from disclosure under an exception. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. Categories 10, "a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency," and 15, "information regarded as open to the public under an agency's policies," apply to the ordinance. The exceptions you raise, sections 552.103 and 552.108, are not "other law" for purposes of section 552.022. Thus, you must release the county ordinance to the requestor. Gov't Code § 552.022; *see also* Open Records Decision No. 551 at 3 (1990) (after considering that due process requires that people have notice of law, finding litigation exception inapplicable to city ordinance).

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You indicate that the information at issue is related to the IAD investigation of Deputy Jose Robert Lozano. You have submitted to this office an affidavit of Assistant Chief Deputy Danny Rich of the Harris County Precinct Five Constable's Office. Deputy Rich states that the IAD investigatory file has been forwarded to the Harris County District Attorney's Office for review for possible prosecution. You have also submitted to this office an affidavit of Harris County Assistant District Attorney Edward Porter. Mr. Porter attests to the fact that the Harris County District Attorney is presently investigating a complaint arising from the arrest of Monte Vincent for driving while intoxicated and the investigation of Monte Vincent for impersonating a public servant. Mr. Porter indicates that the release of information relating to the case would interfere with the investigation of the case. Based upon these representations and our review of the complaint, we conclude that the release of the statements and the email about procedures for towing vehicles would interfere with the detection, investigation, or prosecution of crime. *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 Nos. 350 (1982), 286 (1981). Thus, the Constable may withhold this information from the requestor based on section 552.108(a)(1).

We note that you have not submitted to this office a copy of the requested video of Deputy Lozano videoing the truck at North Bingle Auto. Nor have you made any representations to this office with regard to this portion of the request. Thus, the Constable must release to the requestor the requested video, if it exists. *See* Gov't Code § 552.302.

Finally, with regard to the second question, we note that the Act does not require a governmental body to answer questions. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith to attempt to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990). Thus, to the extent the Constable can relate the request to information it holds, the information is subject to disclosure.

In summary, the Constable need not respond to the portions of the request in which the requestor seeks information the Constable does not maintain: the state's file, the video tape, the pictures taken of the truck, the transcript of the trial proceedings, and the grand jury file. The Constable may seek clarification from the requestor with regard to portions of the request that are unclear. The Constable must withhold from the requestor the requested incident report based on section 552.101 in conjunction with Family Code section 58.007(c). Based on section 552.108(a)(1), the Constable may withhold from the requestor the wrecker drivers' statement and the email about Harris County towing vehicles procedures and requirements. The Constable must release to the requestor a copy of the county ordinance and, if it exists, the video of the truck at North Bingle Auto. To the extent that the Constable can relate the second question to information it holds, the Constable must release the information.<sup>1</sup>

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

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<sup>1</sup>In light of these conclusions, we need not address the other exceptions you claim.

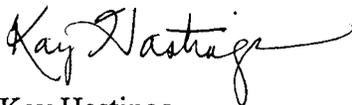
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 165394

Enc: Submitted documents

c: Ms. Nanette Blanchard  
6602 Pleasant Stream  
Katy, Texas 77449  
(w/o enclosures)