OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 14, 2002

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Suite 4049
San Antonio, Texas 78205-3030

OR2002-6500

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172208.

The Bexar County District Attorney's Office (the "district attorney") received a request for six categories of information relating to a specified incident that resulted in the requestor's arrest. You state that the district attorney does not have information responsive to items 3, 4, and 5 of the request. We note that the Public Information Act does not ordinarily require a governmental body to release information that was not within its possession or control when it received a request. Open Records Decision Nos. 558 (1990), 499 (1988). You also state that you have released basic information about the arrest pursuant to section 552.108(c), and you have submitted a copy of the information you have released. *See* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the remainder of the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code 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 that the submitted information relates to a criminal case against the requestor that was dismissed. You therefore assert that the information pertains to a case that concluded in a final result other than conviction or deferred adjudication. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable. Thus, we determine that you may withhold the remainder of 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. Because we are able to make a determination under section 552.108(a)(2), we do not reach your other claims under section 552.108 or your claims under sections 552.103 and 552.111.

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. 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 172208

Enc: Submitted documents

c: Mr. John Stackhouse
3802 Carnation
San Antonio, Texas 78237
(w/o enclosures)