



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 30, 2002

Mr. Loren B. Smith
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Attorneys at Law
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OR2002-7405

Dear Mr. Smith :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174229.

The City of Friendswood (the "city"), which you represent, received a written request for all documents pertaining to a shooting incident at Friendswood Junior High School. You state that, in accordance with *Houston Chronicle Publishing Company 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), the city has released the "basic information" regarding the incident to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to section 552.108(a)(1) of the Government Code. We have also received comments from the requestor as to why the requested information should be released. *See Gov't Code § 552.304.*

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information 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). You state that the information at issue relates to a

pending criminal investigation. Based on your representation, we conclude that the information at issue is excepted from public disclosure pursuant to section 552.108(a)(1) of the Government Code.

We note that the requestor contends that the city has released the submitted information to the Texas Education Agency and that the city has consequently waived section 552.108. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information). However, it is well settled state policy that state agencies should cooperate with one another in the interest of efficient and economical administration of their statutory duties. *See* Open Records Decision Nos. 655 (1997), 516 (1989). This office recognizes that a release to a state agency is not a release to the public for purposes of section 552.007 of the Government Code or section 552.352 of the Government Code, which provides criminal penalties for the release of information considered to be confidential under the Public Information Act. *Id.* Consequently, the city's release of the information at issue to the Texas Education Agency did not result in the waiver of section 552.108. The city therefore may withhold the information at issue pursuant to section 552.108(a)(1) of the Government Code.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/lmt

Ref: ID# 174229

Enc: Submitted documents

c: Mr. Jeff Branscome
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(w/o enclosures)