



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 25, 2003

Mr. Lee Veness
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite B
Waxahachie, Texas 75165-5140

OR2003-2807

Dear Mr. Veness:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180059.

The Waxahachie Police Department (the "department") received a request for records of emergency calls pertaining to two specified streets in the City of Waxahachie between 10:00 p.m. on January 29, 2003, and 2:00 a.m. on January 30, 2003. You have submitted a letter from the requestor clarifying that the requestor seeks information regarding the arrest of a named individual on the date in question. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify or narrow the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). You indicate that some responsive information will be released to the requestor. However, on behalf of the department, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.² We have also considered

¹In your initial request for a decision, you raise section 552.101 in conjunction with section 143.1214 of the Local Government Code. You state that the reference to section 143.1214 was a typographical error. Accordingly, we do not address section 143.1214 in this ruling.

² We note that the requestor argues the Ellis County and District Attorney's Office (the "county attorney") is not an agent of the department and thus does not have standing to request a decision from this office on behalf of the department. The county attorney claims it is acting as the department's legal representative pursuant to an agreement between the county attorney and the department. Thus, the county attorney argues that it has standing to submit this request for a decision. The question of whether the county attorney has standing to request a decision in this case is, in part, a dispute of fact. This office cannot resolve fact disputes in the open records process, and therefore, we must rely on the representations of the county attorney that it does have standing to make this request. Open Records Decision Nos. 554 (1990), 552 (1990).

comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.108(a) provides in pertinent part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). A governmental body claiming section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the submitted information is held by the department and relates to a pending criminal prosecution. Based on your representations and our review, we determine that the release of the submitted 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) (court delineates law enforcement interests that are present in active cases). Thus, we determine that section 552.108(b)(1) applies to the submitted information.

We note, however, that basic information about a crime or arrest is generally considered public. See generally 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). Thus, with the exception of basic information, the department may withhold the submitted information from disclosure based on section 552.108(b)(1) of the Government Code. Based on this finding, we need not reach your other arguments under section 552.108 or your other claimed exceptions to disclosure.³ 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.

³Basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103. Open Records Decision No. 597 (1991). We note that basic information includes booking information and the social security number of an arrested person, but does not include driver's license numbers. See *Houston Chronicle Publ'g Co.*, 531 S.W.2d at 180, 187-88; Open Records Decision No. 127 (1976); see also Gov't Code § 552.130.

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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "David R. Saldivar". The signature is fluid and cursive, with a long horizontal stroke at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 180059

Enc: Submitted documents

c: Mr. Mark D. Griffith
Griffith & Associates
108 West Main Street
Waxahachie, Texas 75165
(w/o enclosures)