OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 7, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2003-3058

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180745.

The Austin Police Department received a request for the following two categories of information:

> 1. The tape recording of the 911 call made between . . . 11:00 p.m. on February 9, 2003 and 2:30 a.m. on February 10, 2003 concerning the theft of a motor vehicle.
>
> 2. The tape recordings of transmissions between any Austin Police Department officer and any other police officer and/or dispatch personnel regarding the theft of a motor vehicle at a specified location between 11:00 p.m on February 9, 2003 and 7:00 a.m. on February 10, 2003.

You inform us the Department has no information responsive to category one of the request.[1] You assert the submitted audiotape is excepted from disclosure under section 552.108 of the

[1] Several provisions of the Act imply a governmental body need not prepare new information to comply with the Act; the Act applies to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to provide information that does not exist. Open Records Decision No. 362 (1983).

Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Section 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain 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) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You explain that the submitted audiotape contains information that relates to a pending investigation. However, the offense report that you submitted as supporting documentation indicates the Department has declared the investigation "unfounded." Therefore, because the information contradicts the Department's assertion, we find the Department has not adequately demonstrated that release of the information "would interfere with the detection, investigation, or prosecution of crime." *See* Gov't Code § 552.108(a)(1). Thus, the Department may not withhold the submitted audiotape based on section 552.108 of the Government Code. As you claim no other applicable exception to disclosure, the Department must release the audiotape to the requestor.

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

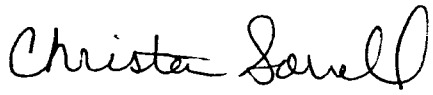
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 180745

Enc: Submitted documents

c: Mr. Malcolm Greenstein
Greenstein & Kolker
1006 East Caesar Chavez Street
Austin, Texas 78702
(w/o enclosures)