



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 12, 2003

Mr. John C. West
General Counsel
Texas Board of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2003-3170

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180851.

The Texas Board of Criminal Justice, Office of the Inspector General (the "OIG") received a request for a specific OIG report. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that the submitted information consists of a completed "Report of Investigation" and a completed "Offense/Investigative Report." The submitted information is subject to release under section 552.022(a) of the Government Code, which provides in pertinent part as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Because the requested information consists of completed reports, the OIG may withhold this information only to the extent it is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. Sections 552.103 and 552.111 are

discretionary exceptions under the Public Information Act and do not constitute “other law” for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body’s position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the OIG may not withhold the submitted information under sections 552.103 or 552.111 of the Government Code. However, you contend that the submitted information is excepted under section 552.108. Thus, we will address whether the information may be withheld under section 552.108.

Section 552.108(a)(1) excepts from disclosure information 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 only applies to a law enforcement agency or a prosecutor. We note that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

You indicate that the District Attorney of Walker County (the “district attorney”) has advised that the requested information relates to a pending criminal investigation by his office. You further state that the district attorney has indicated his desire that the submitted information be withheld under section 552.108. Based on these representations and our review of the submitted information, we agree that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, you may withhold the submitted reports in their entirety under section 552.108(a)(1). As we are able to make this determination, we need not address your remaining exceptions to disclosure.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 180851

Enc: Submitted documents

c: Mr. John Dawson
c/o John C. West
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(w/o enclosures)