



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2003

Mr. David Caylor  
City Attorney  
City of Irving  
825 W. Irving Blvd.  
Irving, Texas 75060

OR2003-9062

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192881.

The City of Irving (the "city") received a request for twenty-one categories of information related to a certain e-mail communication and to the requestor's employment. You advise that the city will release most of the requested information. However, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The city has not directed our attention to any law, nor are we aware of any law, under which any of the submitted information is deemed to be confidential. *See, e.g.*, Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Therefore, none of the submitted information may be withheld from disclosure under section 552.101 of the Government Code.

We now turn to your claim under section 552.108 of the Government Code. Section 552.108 provides, in relevant part:

- (a) 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:

.....

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . . .

A governmental body that raises section 552.108 must sufficiently 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). Specifically, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to an investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information pertains to a criminal investigation that was conducted by a Special Prosecutor after the requestor filed a complaint with the city's police department. You advise that the investigation is now closed and ended without prosecution. Therefore, we conclude that section 552.108(a)(2) is applicable to the information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" offense and arrest report information held to be public in *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 must therefore release the types of information that are considered to be front page offense or arrest report information. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the remaining submitted information under section 552.108(a)(2).

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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 192881

Enc. Submitted documents

c: Ms. Deborah A. Shaklee  
2001 Brazos Drive  
Corinth, TX 76210  
(w/o enclosures)