



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2004

Mr. Kuruvilla Oommen
Assistant City Attorney
City of Houston Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-1695

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#197284.

The City of Houston (the "city") received a request for two specific police incident reports. You advise that the city will release to the requestor one of those incident reports (#60925994). You claim that the remaining requested information (incident report #115243801 P) is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the submitted information contains a news release. Section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. Such information "must be made available to any person." *See* Gov't Code § 552.007(b). Assuming the news release has previously been made available to the public by the city, this document must now be provided to the requestor. *See also* Gov't Code § 552.022(a)(15) (providing for release of information open to public under agency's policies).

Additionally, the submitted information contains an affidavit for a search warrant. The affidavit to support the search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). In this case, the search warrant has been executed. Therefore, the city must release the search warrant affidavit.

Further, we note that section 552.022 of the Government Code governs portions of the requested information. Section 552.022 provides:

(a) 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:

....

(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes those documents filed with a court public; therefore, the city may only withhold the court-filed documents to the extent they are confidential under other law. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). The submitted information includes two copies of a statutory warning and a search warrant, all filed with the court and public under section 552.022(a)(17) unless confidential under other law. Section 552.108, which we address below, is a discretionary exception under the Public Information Act and, as such, does not constitute "other law" for purposes of section 552.022(a)(17).¹ Consequently, these documents may not be withheld under section 552.108. You do not claim that section 552.101 or section 552.130 applies to the documents, and we find that none of the information in these documents is subject to section 552.101 or 552.130. Therefore, these documents must be released.

We will address your section 552.108 claim for the remaining information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested incident report relates to a pending criminal appeal. Based upon this representation, we conclude that the release of the incident report 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.

¹Discretionary exceptions are intended to protect only the interests of the governmental body as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108), 522 at 4 (1989) (discretionary exceptions in general)*. Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1). 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 § 552.007.²

In summary, the city must release the news release if the city has previously made it available to the public. Pursuant to Code Crim. Proc art. 18.01(b), the city must release the search warrant affidavit. The statutory warnings and search warrant, which have all been filed with the court, are public under section 552.022(a)(17) must be released unless confidential under other law. With the exception of the basic front page offense and arrest information, the city may withhold the remaining requested information from disclosure based on section 552.108(a)(1).

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

²Because we have resolved this issue under section 552.108, we need not address your arguments under section 552.101 or 552.130.

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 "Cary Grace", written over a horizontal line.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID#197284

Enc. Submitted documents

c: Mr. R. J. Vargas
3700 N. Main
Houston, Texas 77009
(w/o enclosures)