



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2004

Ms. Traci S. Briggs
Assistant City Attorney
City of Killeen
402 North Second Street
Killeen, Texas 76541-5298

OR2004-1807

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request has been assigned ID# 197434.

The City of Killeen (the "city") received two requests for information from the same requestor on the same day. You advise this office that the responsive information includes an accident report and a specific police offense report.¹ You state that, because the requestor has failed to provide information required under chapter 550 of the Transportation Code, the city will not provide her with a copy of the accident report. You claim that the requested offense report is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments against disclosure and reviewed the submitted information.

You state that information responsive to the Exhibit A request includes an accident report. Review of the submitted accident report form indicates that it has been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the

¹As you note, one request for information is broadly worded (Exhibit A) and the other specifically requests the responsive offense report by its offense report number (Exhibit B).

accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4)). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has not supplied two of the three pieces of information required by the statute in either of her requests for information. You state that the city does not keep a record of those individuals who request accident reports, so it is unknown whether the requestor has previously received a copy of the accident report. Notwithstanding, because the requestor has not provided the statutorily required information in either of her requests, you must withhold the accident report under section 550.065(b) of the Transportation Code.

We next address your claim that the offense report is excepted from disclosure under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

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)(2). 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.

Finally, as you note, the requestor asserts that she has a special right of access to the offense report pursuant to section 552.023 of the Government Code. Section 552.023 gives a person or a person's authorized representative a "special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023. However, section 552.108 is not intended to protect a person's privacy interests. Instead, that section protects the city's law enforcement interests. Therefore, we conclude section 552.023 does not provide the requestor with a special right of access to the offense report. *Cf.* Open Records Decision No. 556 (1990) (noting when a requestor seeks information concerning himself, governmental body cannot claim exception designed to protect requestor's privacy interest as basis for nondisclosure).

In summary, because the requestor has not provided the statutorily required information, you must withhold the accident report under section 550.065(b) of the Transportation Code. Further, with the exception of the basic front page offense report information, you may withhold the requested offense report based on 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).

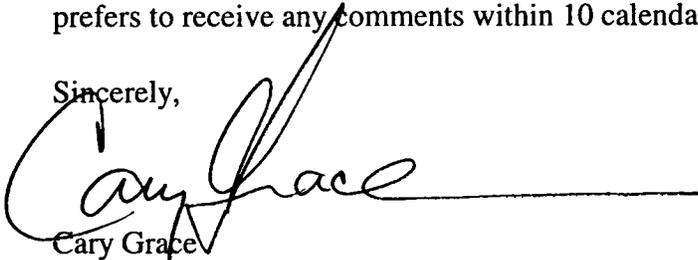
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID#197434

Enc. Submitted documents

c: Ms. Melanie Marshall
5903-D Greengate Drive
Killeen, Texas 76543
(w/o enclosures)