



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2004

Ms. Cheryl D. Holder
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2004-2887

Dear Ms. Holder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199109.

The Dallas County District Attorney's Office (the "district attorney") received a request for any and all information concerning the indictment of a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of records.¹

Initially, you state and we agree, that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides in part that:

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:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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

The requested information is a completed criminal investigation made by the district attorney. Therefore, the requested information must be released under section 552.022(a)(1) unless the information is excepted from public disclosure under section 552.108 or is expressly confidential under other law. You claim that the requested information is excepted from disclosure under section 552.108 or is confidential by law. Accordingly, we will address your arguments against disclosure.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. You state, and the records reflect, that the case at issue was dismissed. Therefore, we agree that section 552.108(a)(2) is applicable to the requested information.

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). Because the suspect in this instance is a police officer, you claim that his home address and telephone number cannot be released as basic information. *See generally*, Gov't Code § 552.1175 (allowing peace officer to elect to withhold home address and telephone number, social security number, and family member information that is maintained by any governmental body). We note, however, that a suspect's home address and telephone number are not considered basic information. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, the district attorney need not release the officer's home address and telephone number as basic information. Accordingly, with the exception of basic information, the district attorney may withhold the requested information under section 552.108 of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Govt. Code § 552.007. As we are able to make this determination, we need not address your remaining arguments against 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. Govt. 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. Govt. 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,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 199109

Enc. Submitted documents

c: Ms. Holly Becka
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(w/o enclosures)