



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-3389

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200267.

The City of Longview (the "city") received a request for (1) open records requests from named individuals for a specified time period and the city's responses to those requests, (2) specified police and fire department reports, and (3) specified call sheets and 9-1-1 calls. You indicate that some responsive information is the subject of Open Records Letter No. 2004-0716 (2004), issued February 2, 2004. You state that some information has been released but claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that a portion of the information at issue in the present request is subject to a previous determination of this office issued as Open Records Letter No. 2004-0716 (2004) on February 2, 2004. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act (the "Act"); and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). If the facts and circumstances

surrounding our previous ruling have not changed, to the extent that the present request seeks information on which we have previously ruled, the city may continue to follow our prior ruling with regards to this information.

You assert that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) of the Government Code 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), .301(e)(1)(A); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).*

You state that the marked portions of the information submitted as the “Murder Case” relate to a criminal investigation that “could still be prosecuted, particularly if new evidence or information is ever acquired.” You also note that “there is no statute of limitations on murder.” Based upon your representations and our review of the information at issue, we conclude that the release of these portions of the “Murder Case” 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. 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). Therefore, we conclude that section 552.108(a)(1) is applicable to the marked portions of the “Murder Case.”

You state that the information submitted as the “Arson Case” relates to an arson investigation by the Longview Fire Department. We note that an arson investigation unit of a fire department is considered a law enforcement agency. *See Open Records Decision No. 127 (1976)*. You also state that this investigation is currently pending prosecution in Gregg County. Based upon your representations and our review of the information at issue, we conclude that the release of the “Arson Case” would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle, 531 S.W.2d 177*. Therefore, we conclude that section 552.108(a)(1) is applicable to the “Arson Case.”

We note, however, that 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). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See 531 S.W.2d at 186-87*. Thus, you must release the types of information that are considered to be front page offense report information, including a detailed description of the offense, even if this information is not actually located on the front page of the incident report. We note, however, that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007. Based on our finding, we need not address your remaining argument against the disclosure of this information, except to

note that section 552.103 does not except basic information from public disclosure. *See* Open Records Decision No. 597 (1991).

You also assert that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with subchapter D of chapter 773 of the Health and Safety Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information made confidential by other statutes. Section 773.091 of the Health and Safety Code addresses certain records regarding emergency medical service (“EMS”) and provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety § 773.091. Subsection 773.091(g) provides, however, that this confidentiality “does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.” *Id.* § 773.091(g).

You state that the remaining submitted fire department report is a record of “the treatment of a patient by [EMS] personnel.” You also state that the submitted EMS report was “created by [city EMS] personnel in the course of their evaluation and treatment of [a patient].” Accordingly, we find that these reports constitute EMS records of the identity, evaluation, or treatment of a patient by EMS personnel. We note that none of the exceptions to confidentiality listed in section 773.092 appear to apply in this instance. *See* Health & Safety Code § 773.093 (listing elements of consent for release of EMS records). Thus, we agree that the submitted EMS records are generally made confidential by section 773.091. However, as noted above, information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of the patient receiving emergency medical services is not confidential under section 773.091 and may not be withheld on that basis. Because you claim no other exception for such information and it is not otherwise confidential by law, the city must release the listed information from the submitted EMS records. The remaining information in the submitted EMS records must be withheld in accordance with section 552.101 in conjunction with section 773.091.

In summary, with respect to the submitted information that was previously ruled on in Open Records Letter No. 2004-0716, the city may continue to follow Open Records Letter No. 2004-0716 to the extent that the facts and circumstances surrounding that ruling have not changed. The city must withhold the submitted EMS records under section 552.101 in conjunction with section 773.091 of the Health and Safety Code with the exception of the

information enumerated in section 773.091(g), which must be released. The city may withhold the "Arson Case" and the marked portions of the "Murder Case" under section 552.108(a)(1) with the exception of basic information, which must be released under section 552.108(c). The remaining information in the "Murder Case" must be released.

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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 200267

Enc. Submitted documents

c: Mr. John Lynch
Longview News-Journal
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(w/o enclosures)