



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2004

Ms. M. Ann Montgomery  
Assistant County & District Attorney  
Ellis County  
1201 North Highway 77, Suite B  
Waxahachie, Texas 75165-5140

OR2004-4030

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 201741.

The Ellis County District Attorney's Office (the "district attorney") received a request for a copy of all witness statements in reference to a specified assault charge. You claim that the 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 reviewed the submitted information.

Initially, we note that although you raise section 552.101 of the Government Code as an exception to required public disclosure, you have not submitted arguments explaining how this exception applies to the requested information. Upon our review of the information at issue, we further conclude that it does not contain information that is confidential under section 552.101. Therefore, you may not withhold any of the requested information under section 552.101 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), (b)(1),

.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the defendant in this case was arrested for a Class A Misdemeanor Assault Causing Bodily Injury, and that the case “concluded on August 11, 2003 with Defendant receiving One (1) Year Deferred Adjudication and Community Supervision.” In support of your contention that the information is excepted from disclosure by section 552.108(a)(1), you state that “the case is not closed and the court still has jurisdiction until the end of the Defendant’s probation period.”

We find, however, that as the defendant has entered a plea with the court and received a sentence, neither the investigation nor the prosecution of the matter is pending. *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). Accordingly, we conclude that you may not withhold the information under subsection 552.108(a)(1). Furthermore, you have not explained how release of the requested information would otherwise interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that you may not withhold the information under subsection 552.108(a)(1).

However, we note that the district attorney may be required to withhold a small portion of the submitted information pursuant to section 552.1175 of the Government Code. Section 552.1175 applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure and provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov’t Code § 552.1175(b). The requested witness statements contain the home address of an individual who appears to be a peace officer. If this individual remains a peace officer and elects to restrict access to this information in accordance with section 552.1175 or is no longer a peace officer but previously made such an election at a time when he was a peace officer, the district attorney must withhold the address we have marked. Otherwise, the district attorney must release this information.

In summary, the marked home address of the peace officer must be withheld under section 552.1175 if a proper election has been or is made under this provision. The remaining information must be released to the requestor.<sup>1</sup>

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).

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<sup>1</sup> The submitted information contains confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the district attorney receives a future request for this information from an individual other than the requestor or his authorized representative, the district attorney should again seek our decision.

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 cursive script that reads "Jennifer E. Berry".

Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 201741

Enc: Submitted documents

c: Mr. Orville R. Cross  
106 Meadow Ridge Avenue  
Venus, Texas 76084  
(w/o enclosures)