



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2004

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

OR2004-4338

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# 202519.

The Metro Narcotics Intelligence and Coordination Unit (the "unit"), which you represent, received a request for "offense reports in which [a specified person] was arrested for a violation of the Texas Penal law" on a specified date. The requestor also seeks the "Arrest Warrant, Arrest Warrant Affidavit and any Arrest Report - Book In report created separately [from] the Offense Report." You state that some of the requested information has been provided to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that portions of the submitted information are not responsive to the request for information. Accordingly, this ruling does not address the public availability of this particular information.

We next note that you did not submit information responsive to the request for the arrest warrant and arrest warrant affidavit. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records

Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now address your claim that the remaining submitted information that is responsive to the request for information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a), in part, 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." Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't 552.108(b)(1). Generally, a governmental body claiming section 552.108 as an applicable exception to disclosure 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 indicate that the submitted information pertains to a pending criminal prosecution or prosecutions. Thus, based on your representations and our review of the remaining submitted information, we find that the release of this information 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). Accordingly, we find that section 552.108(a)(1) applies to the remaining submitted information.

However, we note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See 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 185; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the unit may withhold the remaining submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the unit maintains the discretion to release all or part of the information that is not otherwise confidential by law.¹ See Gov't Code § 552.007.

¹As our ruling is dispositive, we need not address your remaining arguments, except to note that "basic information" may not generally be withheld under section 552.103 of the Government Code. See Open Records Decision Nos. 597 (1991), 362 (1983).

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,

A handwritten signature in cursive script that reads "Cindy Nettles". The signature is written in black ink and is positioned above the typed name.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 202519
Enc. Submitted documents

c: Mr. Michael W. Hartley
P.O. Box 2525
Waxahachie, Texas 75168
(w/o enclosures)