



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2004

Mr. Darrell G-M Noga
Roberts & Smaby, P.C.
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2004-6326

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206165.

The City of Coppell (the "city"), which you represent, received a request for the arrest report, video tape, and alcohol test results concerning a certain incident of public intoxication. You state that the city will release, or already has released to the requestor, any "front page" information, the citation, and any court documents. You claim that the remaining requested information, which you have submitted to this office for review, is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes a document signed by the magistrate of a City of Coppell Municipal Court as well as a copy of the citation, a document that appears to be a court-filed document. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

For the remaining information, we consider your section 552.108 claim. You raise section 552.108(a)(1) and section 552.108(a)(2). Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body claiming subsections 552.108(a)(1) 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). A governmental body claiming subsections 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.

You indicate that the criminal investigation associated with the submitted information had not ended as of the date of your request for decision to us. Thus, based on your representations and our review of the submitted information, we find that section 552.108(a)(1) is applicable to the information. *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).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold

the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.¹ See Gov't Code § 552.007.

In summary, the city must release to the requestor the document signed by the magistrate and the citation. With the exception of the basic information, the city may withhold the remaining information based on section 552.108(a)(1).

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).

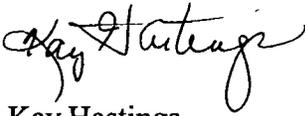
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹In light of our conclusion under section 552.108, we need not address your remaining claims.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 206165

Enc: Submitted documents

c: Mr. Tom Lochry
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(w/o enclosures)