ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2004

Ms. Leona Clay
Administrative Assistant
Harker Heights Police Department
305 Miller's Crossing
Harker Heights, Texas 76548

OR2004-9386

Dear Ms. Clay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212683.

The Harker Heights Police Department (the "department") received a request for records pertaining to a specified accident. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a document that was filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Section 552.108 of the Government Code is a discretionary exception that protects a governmental body's interests and is therefore not "other law" that makes court records confidential for purposes of section 552.022. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Therefore, the department must release the court-filed document. With respect to the remainder of the submitted documents, we will address your argument under section 552.108.

Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted

from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime [.]" Gov't Code § 552.108(a)(1). 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 or prosecution. *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 remaining submitted information pertains to cases that "are pending prosecution and thus have not resulted in a conviction or deferred adjudication." Thus, we understand you to argue that the remaining submitted information pertains to a criminal prosecution that is still pending. Based upon your representation that the remaining submitted information relates to a pending criminal prosecution, we determine 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). Therefore, section 552.108(a)(1) is applicable in this instance.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the remaining submitted information pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information in these reports that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must release the court-filed document under section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/seg

Ref: ID# 212683

Enc. Submitted documents

c: Ms. Rachel W. Leach
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(w/o enclosures)