



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2004

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-9515

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212446.

The City of Houston (the "city") received a request for audio tapes of 9-1-1 calls pertaining to six specified case numbers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that you have raised specific exceptions for the submitted audio recordings pertaining to five of the case numbers specified in the request. However, you have not submitted any comments specifically pertaining to case number 058339904-P. We therefore assume that, to the extent the city maintains a responsive audio recording pertaining to case number 058339904-P, the city has released it to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

With respect to the remaining case numbers at issue in the request, you raise section 552.108 of the Government Code. Section 552.108 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 [required public disclosure] if:

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

(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). 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). Section 552.108(a)(1) typically can apply to information held by a law enforcement agency that pertains to a criminal investigation or prosecution that is currently pending. Section 552.108(a)(2) typically protects law-enforcement records that pertain to a criminal investigation or prosecution that has concluded in a final result other than a criminal conviction or deferred adjudication.

In this case, you inform us that the requested audio recordings associated with case numbers 038361704-R, 052567504-L, and 054035604-C pertain to criminal investigations that concluded in final results other than conviction or deferred adjudication. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is applicable to these audio recordings. You also inform us that the requested audio recordings associated with case numbers 046086604-U and 62228904-J pertain to criminal investigations that are "inactive," but that the investigations "may be reactivated once additional leads are developed." You further inform us that the statute of limitations on the alleged crimes have not yet run. Thus, based on your representations and our review of the submitted information, we agree that section 552.108(a)(1) is applicable to these remaining audio recordings. Accordingly, we conclude that the city may withhold the audio recordings at issue pursuant to section 552.108 of the Government Code. Based on this finding, we need not reach your remaining claimed exceptions to disclosure.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 212446

Enc: Submitted documents

c: Mr. Paul G. Aman
Texas Coalition of Law Enforcement Officers
712 Westcott Street
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(w/o enclosures)