



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2004

Mr. David K. Walker
County Attorney
Montgomery County
207 W. Phillips
Conroe, Texas 77301

OR2004-10146

Dear Mr. Walker:

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# 213899.

The Montgomery County Sheriff's Department ("the sheriff") received a request for information pertaining to numerous identified incidents, including recordings of telephone calls made to the sheriff's dispatch in connection with these incidents. You have submitted information pertaining to two of the identified incidents, and claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. As you have not submitted the remaining information for our review, we assume the sheriff has released this information to the requestor. If not, the sheriff must do so immediately. *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). We have considered the exceptions claimed and reviewed the submitted information.

Initially, we address your assertion that the reports pertaining to the two identified incidents were the subject of a previous ruling issued by this office as Open Records Letter No. 2004-9520 (2004). In that ruling, this office concluded that, with the exception of basic information, section 552.108 authorized the sheriff to withhold report nos. 02A021885 and 04A14471 from disclosure. You do not inform this office that the relevant facts and circumstances have changed since the issuance of Open Records Letter No. 2004-9520. Based on your representations, we determine that the sheriff may continue to withhold these reports in accordance with Open Records Letter No. 2004-9520. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records

or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

You also claim that the submitted tape recording of a telephone call made to the sheriff's dispatch is excepted from disclosure under section 552.108, providing 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:

(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)(2). A governmental body claiming section 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 inform us that the submitted audiotape recording pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this information, and the submitted audiotape recording may be withheld on that basis. Because we reach this conclusion under section 552.108, we need not address your remaining arguments against 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 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,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/krl

Ref: ID# 213899

Enc. Submitted documents

c: Mr. Ira Early
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(w/o enclosures)