



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2005

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-00939

Dear Ms. Ladd:

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# 217878.

The McKinney Police Department (the "department"), which you represent, received a request from the Fannin County Family Crisis Center (the "center") for a particular offense report. You claim that the requested information is excepted from public disclosure under section 552.108 of the Government Code. You also ask whether the department may provide the requested information to the center without waiving any exceptions to public disclosure of the information. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your inquiry about whether the requested information may be transferred to the center. We note that the Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Thus, if information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public unless its public disclosure is expressly prohibited by law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, the question of whether a governmental body may make information available to another governmental body is not generally an issue under the Act, which is concerned with the disclosure of information to the public. *See* Gov't Code §§ 552.001, .002, .021; Open Records Decision No. 661 at 3 (1999). Thus, although a governmental body may treat another governmental body's request for information as a request under the Act, a governmental body that receives such a request

is not required to do so. This office has long recognized that as a matter of public policy, governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997); *but see* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and receiving agency is not among statute's enumerated entities), JM-590 at 5 (1986) (same); Open Records Decision Nos. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In keeping with this policy, this office has acknowledged that information may be transferred between governmental bodies on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Such a transfer of information from one governmental body to another is not a public release of confidential information, for purposes of section 552.352 of the Act, or a selective public disclosure of information, for purposes of section 552.007.

You inform us that the department is willing to transfer the submitted information to the center, but does not wish to waive any applicable exceptions to public disclosure. You do not inform us, however, and we are not otherwise able to ascertain whether the center falls within the definition of a governmental body under the Act. *See* Gov't Code 552.003(1); *see also* Open Records Decision Nos. 621 (1993), 602 (1992), 601 (1992).¹ Nevertheless, if the department is able to determine that the center is a governmental body under the Act, then the department may make the requested information available to the center as an inter-agency transfer of the information without waiving exceptions to public disclosure of the information. We note, however, that the department is not required to transfer information to another governmental body that is otherwise eligible to obtain it. Furthermore, in the event that the center does not qualify as a governmental body under the Act, the center would not be eligible for an inter-agency transfer of the information. *See* Gov't Code §§ 552.007, .352; Attorney General Opinions DM-353 at 4 n.6 (1995), JM-590 at 5 (1986). In light of these alternatives, we next address your claimed exception to public disclosure of the information in question.

Section 552.108 excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records

¹We note that the Act's definition of “governmental body” includes, among other things, “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]” Gov't Code § 552.003(1)(xii).

Decision No. 434 at 2-3 (1986). You inform us that the submitted information relates to an open and pending criminal case. Based on your representation, we find that section 552.108(a)(1) is applicable in this instance.² 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).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the submitted information from public disclosure under section 552.108(a)(1).

In summary: (1) the department may make the submitted information available to the center if the department determines that the center is a governmental body under section 552.003(1) of the Act; and (2) the department may withhold the submitted information from public disclosure under section 552.108(a)(1), except for the basic information that must be released under section 552.108(c).

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

²As we are able to make this determination, we need not address your claim under section 552.108(b).

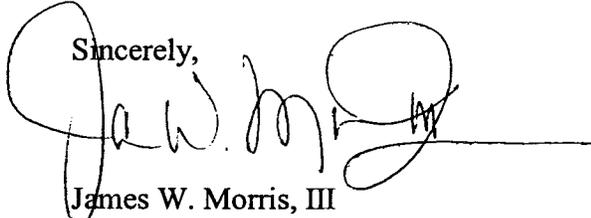
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 black ink, appearing to read 'J.W. Morris, III', with a horizontal line extending to the right from the end of the signature.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 217878

Enc: Submitted documents

c: Ms. Carol Pillars
Fannin County Family Crisis Center
1201 East 9th, Building 6, Second Floor
Bonham, Texas 75418
(w/o enclosures)