



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2005

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2005-03308

Dear Mr. Noga:

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# 222485.

The City of Coppell (the "city"), which you represent, received a request for all information related to the arrest of a named individual. You inform us that "'front page' information, the arrest warrant, arrest warrant affidavit and any court documents related to this Request, along with the Requestor's own statement, will be, or already have been, released to the Requestor" but claim that the submitted 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.

You raise sections 552.108(a)(1) and 552.108(a)(2) of the Government Code, which provide as follows:

(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)(1), (2). 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).

In general, the exceptions to disclosure embodied in sections 552.108(a)(1) and 552.108(a)(2) are mutually exclusive of one another. Thus, both exceptions generally cannot apply to the same information. A governmental body seeking to withhold information pertaining to a pending criminal investigation or prosecution should assert section 552.108(a)(1). A governmental body seeking to withhold information pertaining to a case that has concluded in a final result other than conviction or deferred adjudication should assert section 552.108(a)(2).

In this case, you state that the information at issue relates to a prosecution that “is being actively pursued for the charges referenced in [the submitted information].” Thus, we understand you to assert that the information at issue is excepted under section 552.108(a)(1) of the Government Code. Based on your representations and our review, we determine that the release of the submitted 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). Thus, we determine that section 552.108(a)(1) is applicable to the information at issue.¹

We note, however, that basic information about an arrested person, an arrest, or a crime is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the city must release the types of information that are considered to be basic information about the incident at issue. Although section 552.108(a)(1) authorizes the department 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. *See* Gov't Code § 552.007.

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

¹ Based on this finding, we need not reach your other arguments against disclosure. Please note that it is generally not necessary to assert section 552.108(a)(2) as an exception to disclosure for information relating to a pending criminal prosecution.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 222485

Enc. Submitted documents

c: Mr. Paul Stevens
507 Lee Drive
Coppell, Texas 75019
(w/o enclosures)