ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2005

Mr. James R. Thompson
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR2005-06576

Dear Mr. Thompson:

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# 228584.

The Copperas Cove Police Department (the "department") received a request for all information, including diagrams, photographs, audiotapes, and videotapes, relating to a specified vehicle accident. 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, while you have submitted an incident report for our review, you have not submitted any of the other requested items. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent any additional responsive information existed on the date that the department received the instant request, we assume that you have released it to the requestor. If you have not released this information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now turn to your arguments regarding the submitted information. Section 552.108(a)(1) of the Government Code excepts from 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 section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977); Open Records Decision No.434 at 2-3 (1986). You state that the submitted information relates to an ongoing criminal investigation. Based on your representation, we conclude that you have established that 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). Therefore, we agree that section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle. See* 531 S.W.2d at 185; Open Records Decision No. 127 at 3-5 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the submitted information that is not otherwise confidential by law. 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 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,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 228584

Enc. Submitted documents

c: Ms. Stephanie Karstens
Senior Claim Representative
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(w/o enclosures)