



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2005

Ms. Frankie Farrell  
Custodian of Records  
Kaufman County Sheriff's Department  
P. O. Drawer 849  
Kaufman, Texas 75142

OR2005-06673

Dear Ms. Farrell:

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# 228857.

The Kaufman County Sheriff's Department (the "sheriff") received a request for 62 specific incident reports. 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.

First, we note that you have submitted only 27 of the 62 requested incident reports.<sup>1</sup> We assume that if any of the remaining 35 requested reports existed in the custody of the sheriff on the date you received this request, such information has been released to the requestor. If not, you must do so at this time. See Gov't Code §§ 552.301, .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 circumstances). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

Next, we note that the submitted documents contain a court record signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld

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<sup>1</sup>We note that although the requestor made one request for the information at issue, the sheriff sent each of the 27 reports in separately with a separate cover letter raising exceptions for each report. We have combined these separate submissions into one ruling with the identification number listed above.

from disclosure unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Section 552.108 of the Government Code is a discretionary exception that protect a governmental body's interests and is therefore not "other law" that makes court records confidential for purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the court record in the submitted information, which we have marked, may not be withheld pursuant to section 552.108, and it must be released to the requestor. We will next address your arguments under section 552.108 for the remaining 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, 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). You state that the submitted incident reports all relate to investigations currently pending prosecution. Based upon this representation, we conclude that the release of the submitted incident reports 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).

However, 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, with the exception of the basic front page offense and arrest information and the marked court document, you may withhold the submitted information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/krl

Ref: ID#228857

Enc. Submitted documents

c: Ms. Marsha Chambers  
11858 Betty Lane  
Kaufman, TX 75142  
(w/o enclosures)