ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2005

Ms. M. Ann Montgomery
Assistant County & District Attorney
Ellis County
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2005-07580

Dear Ms. Montgomery:

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# 230725.

The Ellis County Sheriff's Office (the "sheriff") received a request for four categories of information relating to a named individual. You state you have released some of the requested information to the requestor. However, you claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note that a portion of the submitted information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
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> (17) information that is also contained in a public court record.

Gov't Code § 552.022(a)(17). The submitted information contains a document that is encompassed by section 552.022(a)(17) and must be released to the requestor, unless it is confidential under other law. The sheriff claims that the information at issue is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, we note that these exceptions are discretionary exceptions to disclosure that do not constitute other law for the purposes of section 552.022.[1] Accordingly, the sheriff may not withhold the court filed document that we have marked under section 552.103 and 552.108 of the Government Code. Thus, the court filed document we have marked must be released.

We now address your claims for the remaining submitted information. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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 [.]" Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. The submitted information at issue relates to a criminal investigation where the suspect was charged with two separate offenses. We agree that the first charge, possession of alcoholic beverage, did not result in a conviction or a deferred adjudication. However, the second charge of public intoxication did result in a conviction. Upon review, we find that the information relating to both offenses is so intertwined that the investigation cannot be segregated. Thus, based on your representations and our review of the information, we agree that section 552.108 (a)(2) is applicable to the remaining information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c); *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). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 186-87. Thus, the sheriff must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). With the exception of the basic information, the sheriff may withhold the remaining information at issue pursuant to

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[1]Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), *See* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

section 552.108(a)(2). We note that the sheriff has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that section 552.147 of the Government Code[2] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the sheriff must withhold the social security number of the arrestee contained in the submitted information under section 552.147.[3]

In summary, the sheriff must release the court document under section 552.022(a)(17) of the Government Code. The sheriff, with the exception of basic information that must be released, may withhold the remaining submitted information at issue under section 552.108 of the Government Code. The sheriff must withhold the social security number under section 552.147 of the Government Code.[4]

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

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[2]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[3]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

[4]As our ruling on this issue is dispositive, we need not address your remaining argument against disclosure.

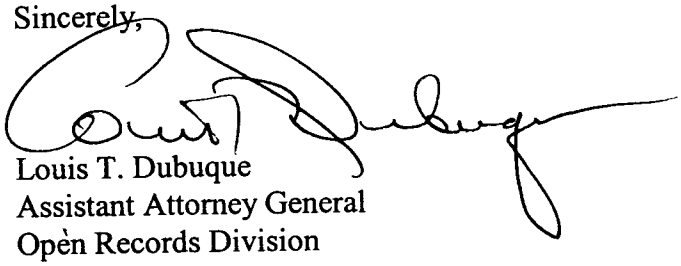
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 230725

Enc. Submitted documents

c: Mr. Jeff Edwards
Whitehurst, Harkness, Ozmun & Brees
P.O. Box 1802
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(w/o enclosures)