



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2005

Mr. Brian M. Bartko
Assistant Criminal District Attorney
Office of the Criminal District Attorney
San Jacinto County
#1 State Highway 150, Room 21
Coldspring, Texas 77331

OR2005-07609

Dear Mr. Bartko:

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# 230732.

The Criminal District Attorney for San Jacinto County (the "district attorney") received a request for photographs that were used in a specified criminal trial. 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.

Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). If any of the submitted photographs were introduced as evidence at trial or shown to the jury, they must be released pursuant to section 552.022(a)(17) of the Government Code.

To the extent any of the submitted photographs were not introduced as evidence or shown to the jury, we address your claim under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that

the photographs at issue pertain to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. We therefore determine that the photographs are excepted from disclosure under section 552.108(a)(2) and may be withheld.

In summary, the district attorney must release any photographs submitted as evidence at trial or that were shown to the jury pursuant to section 552.022(a)(17). To the extent any of the submitted photographs were not introduced as evidence or shown to the jury, they may be withheld under section 552.108(a)(2). We note that the district attorney has the discretion to release all or part of this 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,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 230732

Enc. Submitted documents

c: Mr. Richard Burroughs
Attorney At Law
P.O. Box 1676
Cleveland, Texas 77328-1676
(w/o enclosures)