



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2005

Assistant Chief Robert Dominguez  
Mission Police Department  
1200 East 8<sup>th</sup> Street  
Mission, Texas 78572

OR2005-08325

Dear Assistant Chief Dominguez:

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# 232172.

The Mission Police Department (the "department") received three requests for information. Two of the requests seek incident reports on two named individuals. The third request seeks the affidavits and arrest warrants of four named individuals. You indicate that the department will release the arrest warrants responsive to the third request. You claim that the remaining 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 some of the submitted information is not responsive to any of the three requests. You have submitted one incident report and four statements of the accused as responsive to the third request. However, the third request only seeks affidavits and arrest warrants. Therefore, the incident report and statements in question are not responsive to the request. We have marked this information, which this ruling does not reach and the department need not release in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

We also note that the submitted information includes documents that have been filed with a court. Pursuant to section 552.022(a)(17), documents filed with a court must be released, except to the extent that they are confidential under other law. You claim that these

documents are excepted from disclosure under section 552.108. However, section 552.108 is a discretionary exception that protect a governmental body's interests and may be waived. As such, this section is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the marked court documents must be released under section 552.022(a)(17).

We now address your arguments for the remaining submitted information. Section 552.108(a) 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 remaining information relates to pending criminal investigations. Based upon this representation, we conclude that the release of the remaining 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).

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*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You acknowledge that the submitted documents contain basic information, including the names of the arresting and investigating officers, but you indicate that this basic information should nevertheless be withheld because it relates to a high profile case being investigated by local, state, and federal authorities. However, you raise no other exceptions for withholding this basic information. Because you have not raised any other exception to disclosure, basic information must be released. Thus, with the exception of this basic information, you may withhold the remaining 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.

We also note that the submitted documents contain the arrestees’ social security numbers. Section 552.147 of the Government Code<sup>1</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the

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<sup>1</sup>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).

department must withhold the arrestees' social security numbers contained in the submitted information under section 552.147.<sup>2</sup>

In summary, the arrestees' social security numbers must be withheld under section 552.147 of the Government Code. With the exception of the court file documents and basic information, the department may withhold the remaining information under section 552.108 of the Government Code.

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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>2</sup>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.

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 Office of the Attorney General 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. 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 232172

Enc. Submitted documents

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