



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2005

Mr. David R. Watson
Harbour, Smith, Harris & Merritt
P. O. Drawer 2072
Longview, Texas 75606-2072

OR2005-08989

Dear Mr. Watson:

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# 233798.

The Gladewater Police Department (the "department"), which you represent, received two requests from the same requestor. The first request dated July 20, 2005 sought "the entire...investigative file resulting from...[a particular] incident." The second request dated July 25, 2005 asked for various policies and procedures, as well as "the type of firearms sanctioned...for use by a Gladewater Police Officer." You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any responsive information for the request dated July 25 seeking various policies, procedures, and firearm information. We assume the department has released this information to the extent that it existed on the date of the request. If it has not, it must do so 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).

Next, we note that the submitted documents include an ST-3 accident report. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision,

the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has provided the department with the date of the accident and a name of a person involved. Thus, because two of the three requirements under section 550.065(c)(4) have been satisfied, you must release the accident report in its entirety to the requestor.

We turn now to your arguments for the remaining submitted information. Section 552.108 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.” Gov’t Code § 552.108(a)(1). 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 inform us that the information the department seeks to withhold pertains to ongoing criminal investigations. Based on this representation, we agree that section 552.108(a)(1) is applicable and the information at issue may be withheld on that basis. *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).

We note, however, that 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); *Houston Chronicle*, 531 S.W.2d at 186-188; Open Records Decision No. 127 (1976). Thus, with the exception of the basic front page offense information, which you state you have released, the department may withhold the submitted information from disclosure based on section 552.108(a)(1) of the Government Code.¹ We note that the department has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, the department must release the marked ST-3 accident report to the requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the department may withhold the remaining information at issue 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

¹As our ruling is dispositive, we do not address your remaining arguments.

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).

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 233798

Enc. Submitted documents

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(w/o enclosures)