ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2005

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2005-09062

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 236900.

The Allen Police Department (the "department"), which you represent, received two requests from the same requestor for information pertaining to a specified incident. You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the submitted information relates to a pending case. Thus, based on this representation, we find that section 552.108(a)(1) is applicable to the submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code §552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). *See* Open Records

Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Accordingly, we conclude that with the exception of basic information that must be released to the requestor, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of this information that is not otherwise confidential by law.[1] *See* 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); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

---

[1]Because we base our ruling on section 552.108(a)(1) of the Government Code, we need not address your remaining claimed exception to disclosure, except to note that "basic information" may not generally be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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,

Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 236900

Enc. Submitted documents

cc: Mr. Alejandro Carrera
1302 Mills Court
Allen, TX 75013
(w/o enclosures)