



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2005

Mr. Asem Eltiar  
Assistant Police Legal Advisor  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2005-09141

Dear Mr. Altair:

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# 233676.

The City of Arlington (the "city") received a request for all police reports, "STARR reports," or other reports reflecting police calls for service to four separate, identified locations from January 1, 2001 to the present. The requestor also seeks all correspondence, from January 1, 2001 to the present, between the city, its police department, council members, and other city representatives and any third party, including two named individuals, the Texas Alcoholic Beverage Commission, or any citizen's group about a specified business. You indicate that some information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not later than the tenth business day after the date of receiving the written request. Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the

governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). This office did not receive the request for a decision within the ten business day period mandated by section 552.301(b) or a copy of the specific information requested or representative samples within the fifteen business day period mandated by section 552.301(e).

Because the city failed to comply with the procedural requirements of section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. See Open Records Decision No. 150 at 2 (1977).

You state, and the submitted documentation reflects, that you contacted the requestor in order to inform him of the cost of producing the requested information and to determine whether he wished the city to produce all of the information responsive to the request. See Gov't Code § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). Section 552.222(b) of the Government Code permits the governmental body to ask the requestor to clarify a request, if what information is requested is unclear to the governmental body. See also Open Records Decision No. 304 at 1 (1982). Section 552.222(b) also provides that if a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of the request might be narrowed. See Open Records Decision No. 87 at 3 (1975). You do not contend that the city was uncertain about what information was being requested or that it wished to discuss how the requestor might narrow the scope of his request. Furthermore, section 552.2615 of the Government Code provides that the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. See Gov't Code § 552.2615(g) (providing that "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"); see also Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with a requestor to clarify or narrow a request for information will toll ten-business-day deadline under section 552.301(b)). Further, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. See Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. See Open Records Decision No. 586 at 3 (1991). Because you state that the

Tarrant County District Attorney's Office (the "district attorney's office") and the city's Chief Municipal Prosecutor ("prosecutor") both object to the release of the submitted information that pertains to cases pending with these entities, we will consider the applicability of section 552.108. Furthermore, section 552.101 can also constitute a compelling reason to withhold information, and we will consider your arguments under that exception as well. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. We note that one incident report contained in the information you have labeled Exhibit B involves a juvenile arrestee. Section 58.007(c) of the Family Code provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The incident report we have marked in Exhibit B involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, the marked information in Exhibit B is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

You argue that the information you have labeled Exhibit A is excepted from disclosure under section 552.101 in conjunction with the common law right to privacy. Section 552.101 also encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation*

included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy. Exhibit A pertains to allegations of attempted sexual assault and sexual assault. Therefore, the city must withhold the information we have marked that would identify or tend to identify the victims pursuant to section 552.101 in conjunction with common law privacy.

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 explain that the district attorney’s office and the prosecutor both indicate that release of the submitted information that pertains to these entities’ pending cases will negatively affect these criminal prosecutions. Based upon this representation, we conclude that the release of this 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). Thus, section 552.108 is applicable to the remaining submitted information in Exhibit B.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the remaining information in Exhibit B from disclosure pursuant to 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.

Finally, we note that Exhibit A-2 contains information to which section 552.130 of the Government Code applies.<sup>1</sup> Section 552.130 provides in relevant part:

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). You must withhold the information we have marked under section 552.130.

In summary, the city must withhold the marked information in Exhibit B under section 552.101 in conjunction with section 58.007 of the Family Code. The city must withhold the identifying information we have marked in Exhibit A under section 552.101 in conjunction with common law privacy. With the exception of basic information, which must be released, the city may withhold the remaining portions of Exhibit B under section 552.108. The city must withhold the section 552.130 information that we have marked in Exhibit A-2.

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).

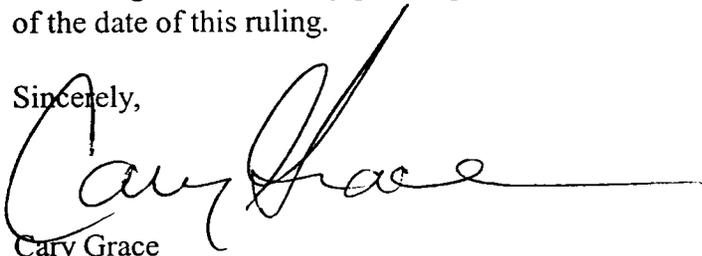
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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).

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,

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

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/sdk

Ref: ID# 233676

Enc. Submitted documents

c: Mr. Charles J. Quaid  
Quaid & Quaid, L.L.C.  
5910 North Central Expressway, Suite 1950  
Dallas, Texas 75206  
(w/o enclosures)