



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

Mr. Charles K. Eldred
Barney Knight & Associates
Executive Office Terrace
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2005-10346

Dear Mr. Eldred:

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# 239432.

The Largo Vista Police Department (the "department"), which you represent, received a request for a specified incident report. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the 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 requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report 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*, and includes such information as the identification and description of the complainant and the location of the crime. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the requested information from disclosure based on section 552.108(a)(1).

You contend that some of the basic information is excepted from disclosure under section 552.117 of the Government Code. Specifically, you assert that the complainant's address, which is also the location of the crime, is subject to section 552.117(a)(2) because it is the address of a peace officer who is employed by the Austin Independent School District. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and personal telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a)(2). We note, however, that the protections of section 552.117 of the Government Code only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). In this instance, the peace officer is listed as the complainant / victim in the submitted report. Further, he is employed by the Austin Independent School District, not by the department. In either case, the peace officer's personal information included in the submitted information is not information that the department holds in its capacity as an employer, and it may therefore not be withheld based on section 552.117(a)(2). However, this information may be excepted under section 552.1175 of the Government Code, which provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

¹"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

Gov't Code § 552.1175(b). If the peace officer at issue notifies the department that he chooses to keep this information confidential in accordance with section 552.1175(2), the department must withhold his address pursuant to section 552.1175 of the Government Code.

In summary, with the exception of basic information, the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. If the peace officer at issue notifies the department that he chooses to keep his personal information confidential in accordance with section 552.1175(2), the department must withhold his address pursuant to section 552.1175 of the Government Code. The department must release the remaining basic information.

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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 239432

Enc. Submitted documents

c: Ms. Jenny Hoff
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(w/o enclosures)