



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2005

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, TX 77056-1918

OR2005-10599

Dear Mr. Schneider:

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# 236981.

The City of Seabrook (the "city"), which you represent, received four requests, from three requestors, for information related to the same incident. You have withdrawn your request for an open records decision regarding two of the requests because one requestor has withdrawn his two requests for information voluntarily. We do not address in this ruling the information you have submitted only for the two withdrawn requests. One of the remaining requests is for the city police department (the "department") report for the incident at issue; both remaining requests are for the 911 audio recording for the incident at issue. You state you will redact the social security numbers from the responsive information pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147 (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from this office under the Act). You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the narrative information on page five of the submitted report and pages six through sixteen of the report, which you have highlighted, as well as the submitted 911 audio recording, are excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or

deferred adjudication. You state, and the information at issue reflects, that the requested report and 911 audio recording pertain to an investigation of the department that did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information. *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 arrest, an arrested person, or a crime. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the city must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. The city may withhold the remaining portions of the report it seeks to withhold under section 552.108(a)(2).¹

We further note that the remaining information in the report the city does not seek to withhold under section 552.108 contains information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the Texas motor vehicle record information you have highlighted in the submitted report. *See* Gov’t Code § 552.130.

In summary, the city need not release the information submitted only for the two withdrawn requests. The city must release basic information from the submitted report, including a detailed description of the offense. The remaining narrative information on page five of the submitted report and pages six through sixteen of the report, as well as the submitted 911 audio recording, may be withheld pursuant to section 552.108(a)(2) of the Government Code. The city must withhold the marked Texas motor vehicle information in the submitted report pursuant to section 552.130 of the Government Code. The remaining information in the submitted report must be released.

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 on this issue is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 236981

Enc. Submitted documents

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