



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 20, 2005

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2005-11422

Dear Mr. Rodriguez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 242426.

The El Paso Police Department (the "department") received a request for information pertaining to a traffic accident. The department has released some information but asserts the remaining information is excepted from public disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.

Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. The department must release all of the arrest warrant and the arrest warrant affidavit in its entirety if it was presented to the magistrate in support of the issuance of the warrant pursuant to article 15.26. We note that article 15.26 governs the release of these records and the department may not withhold the motor vehicle information in these records under section 552.130. *See* Gov't Code § 552.130 (information relating to Texas driver's license or motor vehicle title or registration is excepted from public disclosure).

If the arrest warrant affidavit was not presented to the magistrate in support of the issuance of a warrant, we consider the department's section 552.108 assertion for it and the rest of Exhibit B. 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 submitted as Exhibit B relates to a pending criminal case. Based upon this representation, we conclude that release of the 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).

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 Publishing 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit B from disclosure based on 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. In Open Records Decision No. 649 (1996), which interpreted section 772.318 of the Health and Safety Code, we examined several confidentiality provisions in chapter 772 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Section 772.318 of the Health and Safety Code makes confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier. See Open Records Decision No. 649 (1996). We agree the department must withhold the originating telephone number and address in Exhibit C under section 772.318.

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); *Tex. 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 of the Texas Building and Procurement Commission 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/krl

Ref: ID# 242426

Enc: Submitted documents

c: Mr. Pascual Madrigal
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(w/o enclosures)