



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Mr. Jason L. Mathis
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2005-11558

Dear Mr. Mathis:

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# 239077.

The Addison Police Department (the "department") received a request for 1) the record of a named officer's dispatch to the requestor's residence on September 3, 2005, 2) information related to a September 20, 2005 9-1-1 call and arrest at the same residence, 3) notes and records from a telephone conversation between the requestor and a named officer, 4) records regarding another telephone conversation, and 5) notes and other information regarding another 9-1-1 call. You inform us that the department does not maintain information regarding Items 3, 4, and 5.¹ You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301(a), (b).

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

While you raised section 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.111 until after the ten-business-day deadline had passed. Section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and is generally waived by the governmental body's failure to comply with section 552.301 of the Government Code. *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold any of the submitted information under section 552.111 of the Government Code.

Next, we address your contention that the department does not have a document that is responsive to Item 1 of the request, as the named officer is not listed in the dispatch information. The department must make a good faith effort to relate a request to the information it holds. Open Records Decision Nos. 561 (1990), 87 (1975); *see* Gov't Code § 552.353 (providing penalties for failure to permit access to public information). The department has submitted as Exhibit C information regarding a police dispatch to the requestor's residence on September 3, 2005. Upon review of the submitted dispatch information, we find that Exhibit C is responsive to the request. Accordingly, we will address your arguments against the disclosure of Exhibit C.

You claim that Exhibit C is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b) excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." 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). Although you assert that release of the dispatch information would generally interfere with the department's ability to enforce the law, you do not provide any explanation to support your claim. *See* Open Records Decision No. 562 at 10 (1990) (to claim statutory predecessor to section 552.108(b)(1), governmental body has burden of explaining how and why release of information would interfere with law enforcement and crime prevention). As such, we conclude that the department has failed to demonstrate how release of Exhibit C would interfere with law enforcement. Accordingly, Exhibit C is not excepted from public disclosure under section 552.108(b)(1).

The department claims that Exhibit D is excepted under section 552.108(a)(1), which 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." You state that Exhibit D relates to a pending criminal investigation. Based upon this representation, we conclude that the release of Exhibit D 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) (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). 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). We also note that the submitted report contains the arrestee's social security number. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. However, in accordance with section 552.023, the requestor in this instance has a special right of access to his own social security number, and it must be released to him. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Although section 552.108(a)(1) authorizes you to withhold the remaining information in Exhibit D from disclosure, you may choose to release all or part of this information that is not otherwise confidential by law. See Gov't Code § 552.007.

In summary, Exhibit C must be released. With the exception of the basic information and the requestor's own social security number, the department may withhold Exhibit D from disclosure under section 552.108(a)(1) of the Government Code.

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

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 239077

Enc. Submitted documents

c: Larry Loebig
c/o Jason L. Mathis
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