



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2006

Ms. Lizbeth Islas Plaster
Assistant City Attorney
City of Lewisville
P. O. Box 299002
Lewisville, Texas 75029-9002

OR2006-15131

Dear Ms. Plaster:

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#267877.

The City of Lewisville (the "city") received a request for (1) a copy of a specified incident report, (2) a copy of an internal affairs complaint against a named officer, and (3) copies of video recordings and specified audio recordings pertaining to a particular incident. You state that the city does not have the requested video and audio recordings.¹ You further inform us that you will release some of the responsive information to the requestor. However, you claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains court-filed documents. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. See Gov't Code § 552.022(a)(17) (information contained in public court record is not excepted from required disclosure under Act unless expressly confidential under other law). Although

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

you assert this information is excepted under section 552.108 of the Government Code, this section is a discretionary exception within chapter 552 of the Government Code and not other law that makes information confidential. *See* Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the court-filed documents may not be withheld under section 552.108 of the Government Code and must be released.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

(b) 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Generally, a government body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the information would interfere with a particular criminal investigation or prosecution. *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 a portion of the submitted information, marked as Exhibit B, relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of Exhibit B 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).

The remaining information, submitted as Exhibit C, pertains to an internal affairs investigation. Section 552.108 is generally inapplicable to a police department's internal administrative investigations that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In this instance, however, you explain that the information pertains to a complaint against a Lewisville Police Department officer and is directly related to the pending criminal investigation in Exhibit B.

Based on your representations, we find that section 552.108 of the Government Code is applicable to Exhibit C as well.

However, section 552.108 of the Government Code 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*. Thus, with the exception of basic front page offense and arrest information, which you state you have released, the city may withhold the remaining information based on section 552.108(a)(1) of the Government Code.² We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. *Id.* § 552.007.

In summary, the city must release the court-filed documents we have marked pursuant to section 552.022 of the Government Code. With the exception of basic information, the city may withhold the remaining information in Exhibits B and C pursuant to section 552.108 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

²We note that some of the information being released contains information that would otherwise be confidential under section 552.147 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (*privacy theories not implicated when individual asks governmental body to provide him with information concerning himself*). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.

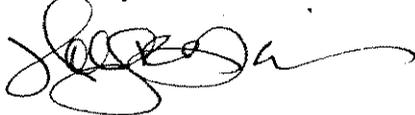
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 267877

Enc. Submitted documents

c: Courtney Lewis
1137 Westwood Drive
Lewisville, Texas 75067
(w/o enclosures)