



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2006

Mr. Hugh Coleman
Assistant District Attorney
Denton County Criminal District Attorney's Office
127 N. Woodrow Lane
Denton, Texas 76205

OR2006-00821

Dear Mr. Coleman:

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# 240997.

The Denton County Sheriff's Office (the "sheriff") received a request for information pertaining to a named police officer. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information includes a Report of Resignation or Separation of License Holder, which is commonly referred to as an "F-5." Section 1701.452 of the Occupations Code requires a law enforcement agency to submit a report to the Texas Commission on Law Enforcement Officer Standards and Education regarding an officer licensed under chapter 1701 who resigns or is terminated from the law enforcement agency. *See Occ. Code § 1701.452.* Section 1701.454 provides in relevant part the following:

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Id. § 1701.454. After reviewing the submitted information, we conclude that the sheriff must withhold the F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Next, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). The submitted information contains completed investigations made for the sheriff, which are made expressly public by section 552.022 and must be released, unless they are excepted from disclosure under section 552.108 or confidential under other law. Section 552.103 of the Government Code is a discretionary exception under the Act that does not constitute “other law” for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the sheriff may not withhold this information under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld as provided by section 552.108, we will address your argument under this exception for the information subject to section 552.022 and all of the remaining information.

Section 552.108(a) of the Government Code 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.” Gov’t Code § 552.108(a)(1). 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 an officer involved in the arrest of the requestor’s client. Further, you assert that disclosure of the requested information would interfere with the pending prosecution because the information could be used for impeachment purposes. Based upon your representations, we conclude that the release of this 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). Therefore, the

information may be withheld pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 240997

Enc. Submitted documents

c: Mr. J. Michael Jaynes
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(w/o enclosures)