



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2006

Ms. Lisa Villarreal
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2006-04031

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 247694.

The Office of the Attorney General (the "OAG") received a request for 1) the final report and attachments concerning the OAG's inquiry into the 1999 drug arrests in Tulia, Texas and 2) the public information requests for the final report. The OAG has released item 2 but claims the information responsive to item 1 is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample of information.¹ We have also received and considered comments from the requestor and the United States Department of Justice. See Gov't Code § 552.304 (person may submit comments stating why information should or should not be released).

First, the requestor states one reporter for *D Magazine* obtained a copy of the report. The reporter states in his article that although the OAG refused to share its report, it nevertheless "slipped out." Todd Bensman, *Tom Coleman Is Not the Biggest Racist in America*, *D MAGAZINE*, April 2005. Section 552.007 of the Government Code does not permit the

¹We assume that the "sample" records submitted to this office are 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.

selective disclosure of information to the public. *See* Gov't Code § 552.007; Open Records Decision No. 463 at 1-2 (1987). Once information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited by law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Here, it is clear from the article that the OAG did not voluntarily release the information and therefore has not waived its claimed exceptions.

Next, the OAG states the information was addressed in Open Records Letter No. 2004-3728 (2004), which concluded the OAG must release information filed with a court pursuant to section 552.022(a)(17) of the Government Code and a complaint pursuant to article 15.26 of the Code of Criminal Procedure. *See* Gov't Code § 552.022(a)(17) (information contained in public court record is public); Crim. Proc. Code art. 15.26 (affidavit presented to magistrate in support of issuance of arrest warrant is public information). The prior decision further found that the OAG may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code because its criminal investigation was still active at that time. The OAG explains the facts have changed since the issuance of the prior decision in that its investigation has concluded. Thus, the OAG asserts the information is now excepted from public disclosure under section 552.108(a)(2).

Before we address the OAG's section 552.108 assertion, we first note that the changed facts do not affect the public availability of the complaint. Thus, the OAG must release the complaint pursuant to article 15.26 as directed in Open Records Letter No. 2004-3728 to the extent the complaint is responsive to the request. In addition, to the extent the court-filed information is responsive to the request, the OAG must release the information that it previously released in response to the prior open records request. Because this information was previously released to the public, the OAG may not withhold it under section 552.108 now. *See* Gov't Code § 552.007.

We now address the OAG's section 552.108 claim for the remaining records at issue. 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. The OAG argues section 552.108(a)(2) is applicable because its criminal investigation conducted by the OAG's former Prosecutor's Assistance Division concluded in a result other than conviction or deferred adjudication. The requestor argues Tom Coleman was convicted in matters related to the Tulia drug arrests. However, that conviction did not result from the OAG's investigation. Because the OAG's closed case did not result in a conviction or deferred adjudication, we agree section 552.108(a)(2) is applicable.

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 information, you may withhold the information from disclosure based on section 552.108(a)(2). 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. Because section 552.108 is dispositive, we do not address the OAG's other assertions.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 200948

Enc: Submitted documents

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