



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2007

Mr. Roger E. Gordon  
Bovey & Bojorquez, L.L.P.  
12325 Hymeadow Drive  
Suite 2-100  
Austin, Texas 78750

OR2007-03744

Dear Mr. Gordon:

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# 275398.

The Brenham Police Department (the "department"), which you represent, received a request for three offense reports and a recording of a specified 9-1-1 telephone call. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the department has submitted information that is not responsive to the present request. This information, which you have submitted at Tab C, is not responsive to this request and need not be released. Moreover, we do not address such information in this ruling.

You claim that the responsive information is excepted from disclosure under section 552.108(a) of the Government Code. This section 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 id.* § 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance,

you state that the submitted information pertains to pending prosecutions being conducted by the District Attorney for the 21<sup>st</sup> Judicial District (the “district attorney”). Furthermore, you have provided us with representations from the district attorney in support of your claim. Based on your representations and our review of the records, we agree that section 552.108(a)(1) applies to the responsive information. 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*. 531 S.W.2d at 177. Thus, with the exception of the basic front page information the department may withhold the responsive information from disclosure based on section 552.108(a)(1).<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we do not address your other claims for exception of the information, except to note that basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

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,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eb

Ref: ID# 275398

Enc. Submitted documents

c: Mr. Larry Mark Polsky, Esq.  
2440 Becker Drive  
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(w/o enclosures)