



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2007

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2007-06351

Dear Ms. DeLuca:

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# 279087.

The City of College Station (the "city") received a request for a specific police incident report. You state that the accident report has been released to the requestor. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

Initially, we address the comments submitted to this office by the requestor. The requestor asserts that the accident report has not been released to him. The city states this report has been released. Whether or not the city released this accident report is a question of fact. This office is unable to make factual determinations or resolve factual disputes in the ruling process. *See* Attorney General Opinions GA-0087 at 1 (2003), GA-0003 at 1 n.2 (2003), JC-0534 at 1 (2002) (this office does not make factual determination in opinion process). We therefore must rely on a governmental body's representations with regards to such issues. Thus, we assume the city has released the accident report.

Next, we address the requestor's contention that the city previously released to him information it now seeks to withhold. We note that section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to a member of the public. *See id.* § 552.007(b). As a general rule, if a governmental body releases information to a member of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as section 552.108, can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." *See Open Records Decision Nos. 490, 400.* If it is established that the city previously released any of the submitted information to the requestor, the city cannot now withhold such information under section 552.108. However, if the city previously released confidential information, such information remains confidential and must not be released pursuant to section 552.007. To the extent the submitted information has not been presented to the requestor, we address the city's arguments for the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). 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. You assert that the submitted information pertains to a criminal investigation that concluded and did not result in a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

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 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). Thus, with the exception of basic front page offense and arrest information, the city may withhold the submitted information based on section 552.108(a)(2) 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).

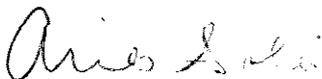
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Aries Solis
Assistant Attorney General
Open Records Division

AS/eeg

Ref: ID# 279087

Enc. Submitted documents

c: Mr. Donald Deere
1500 Frost Drive
College Station, Texas 77845
(w/o enclosures)