



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
5805 North Lamar Boulevard., Box 4087
Austin, Texas 78773-0001

OR2007-06742

Dear Ms. Smith:

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# 279741.

The Texas Department of Public Safety (the "department") received a request for information regarding specific accident. You state that you will release the accident report. *See* Transp. Code § 550.065(c)(4) (providing for the release of accident reports to a person who provides two of three required pieces of information). 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.¹

We initially note that the submitted autopsy report has been filed with a court. Pursuant to section 552.022(a)(17) of the Government Code, documents filed with a court must be released, except to the extent that they are confidential under other law. You claim that the autopsy report is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's

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.

interests and may be waived. *See* Open Records Decision No. 177 (1977) (law enforcement exception may be waived by governmental body); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.108 is not other law that makes information confidential for the purposes of section 552.022(a)(17). Therefore, the autopsy report may not be withheld under section 552.108 and must be released under section 552.022(a)(17) of the Government Code.

Now we turn to your argument concerning the remaining submitted 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 id.* §§ 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 remaining records at issue relate to a pending criminal investigation. Based upon this representation, 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). Accordingly, the department may withhold the remaining information under section 552.108(a)(1) 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

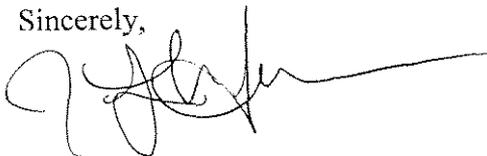
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Jaelyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ma

Ref: ID# 279741

Enc. Submitted documents

c: Mr. Ryan Krikpatick
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(w/o enclosures)