



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2007

Mr. Robert C. Wendland
Rapier, Wilson & Wendland, P.C.
103 West McDermott
Allen, Texas 75013

OR2007-08952

Dear Mr. Wendland:

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# 283823.

The Royse City Police Department (the "department"), which you represent, received a request for all information relating to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.101 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 a portion of the submitted information, which you claim is excepted from disclosure under section 552.108, was voluntarily released by the department in response to an earlier request. You state that you previously released "a copy of the original offense report related to the offense at issue" to the requestor. The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from the public,

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.

unless its public disclosure is expressly prohibited by law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). Section 552.108 does not prohibit public disclosure of information. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 did not prohibit release of information). Therefore, because the offense report has been voluntarily released to a member of the public, the department may not now withhold the report under section 552.108 of the Government Code.

In addition, we note that the submitted information includes a document that has been filed with a court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless confidential under other law. *See* Gov't Code § 552.022(a)(17). You claim that the document at issue is excepted from disclosure under section 552.108, but section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17), and the department may not withhold the court-filed document on that ground.

We next note that the submitted information includes ST-3 accident reports. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this case, the requestor has not provided two of the three pieces of information specified by the statute. Accordingly, the submitted ST-3 accident reports must be withheld in their entirety.

We next address your arguments 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.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the remaining information relates to an ongoing criminal investigation. Based on 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). Thus, the remaining information may be withheld under section 552.108(a)(1) of the Government Code.²

In summary, the submitted ST-3 accident reports must be withheld in accordance with section 550.065 of the Transportation Code. Other than the offense report, which you state was subject to voluntary release by the department, and the court-filed document that we have marked, the remaining information may be withheld under section 552.108(a)(1) of the Government Code. The remaining information must be released to the requestor.

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

²As our ruling on this issue is dispositive, we do not reach your remaining arguments.

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/eeg

Ref: ID# 283823

Enc. Submitted documents

c: Mr. Robert L. Greening
Penick & Greening, P.C.
4144 North Central Expressway, Suite 640
Dallas, Texas 75204
(w/o enclosures)