



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2007

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2007-11075

Dear Ms. Camp-Lee:

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# 287693.

The City of Round Rock (the "city"), which you represent, received a request for any and all document and materials, including tapes, pertaining to the requestor. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). While you raised section 552.108 of the Government Code within the ten-business-day deadline as required by subsection 552.301(b), you did not raise section 552.103 of the Government Code until after the ten-business-day deadline had passed. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As you have failed to comply with the procedural requirements of section 552.301 with respect to your claim under

section 552.103, we find that the city has waived this exception. Therefore, the city may not withhold any of the requested information under section 552.103. However, we will address your other argument against disclosure of the information at issue.

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 of the Government Code must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation and prosecution. Based upon this representation and our review, we conclude that the release of the submitted 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).

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*. Thus, with the exception of basic front page offense and arrest information, which you state has been released, the department may withhold the submitted information based on section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law.¹ *Id.* § 552.007.

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

¹We note that the basic information contains the arrestee’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom the information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 287693

Enc. Submitted documents

c: Mr. Lance A. Mann
6005 Spindletop Terrace
Round Rock, Texas 78681
(w/o enclosures)