



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2007

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2007-11549

Dear Mr. Willard:

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# 288292.

The Lubbock Police Department (the "department") received a request for information regarding a specific police report. 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 considered comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

First, we address the requestor's contention that the department previously released the requested information to KCBD News Channel 11, a local Lubbock CBS affiliate. We note that section 552.007 of the Government Code prohibits selective disclosure of information. Thus, a governmental body cannot withhold information from a requestor that it has voluntarily made available to another member of the public unless the information is confidential by law. *See id.* § 552.007(b). As a general rule, if a governmental body releases information to one 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.

In this case, if the department previously released any of the submitted information to a member or members of the public, the department cannot now withhold such information

under section 552.108. However, if the department previously released confidential information, such information remains confidential and must not be released to the requestor. To the extent the department has not released the submitted information to the public, we address the department's arguments for withholding the 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* Gov't Code §§ 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 records at issue relate to an ongoing 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).

We note, however, that section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

In summary, to the extent the department has not released the submitted information to the public, the department may withhold the submitted information under section 552.108 of the Government Code, with the exception of the basic information, which must be released to the requestor.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 288292

Enc: Submitted documents

c: Mr. Chris E. White
7001 Utica, Apartment 1004
Lubbock, Texas 79424
(w/o enclosures)

Ms. Kara S. Rariden, P.C.
3225 Tanglewood Trail
Fort Worth, Texas 76109
(w/o enclosures)