



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2007-13194

Dear Ms. Chang:

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 #291453.

The Houston Police Department (the "department") received a request for all documents pertaining to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a custodial death report. Generally, custodial death reports are public information and must be released. *See* Crim. Proc. Code art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). However, you assert and the document reflects, that this custodial death report, marked as Exhibit 2A, pertains to the death of an off-duty Harris County Deputy Constable who was inadvertently shot and killed by members of the Harris County Sheriff's Office (the "sheriff") while he was attempting to assist them in apprehending a fleeing suspect. You state that the department prepared this report to help document the criminal investigation and not to report a death in custody. Based on your representations and our review, we agree that Exhibit 2A does not pertain to the death of a person in custody of a peace officer and is not subject to article 49.18 of the Code of Criminal Procedure. Accordingly, we will address your argument against disclosure of this report and the remaining information under section 552.108.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state that Exhibits 2 through 7 pertain to an open and active criminal investigation being conducted by the department. You explain that although the pursuit and shooting in question was by sheriff's officers, the department is investigating this incident since it occurred within its own jurisdiction. You state further, and provide documentation showing, that these exhibits pertain to an open and active Federal Bureau of Investigation ("F.B.I.") investigation into the shooting of the deputy constable, and that the F.B.I. objects to their release at this time. Based on these representations, we determine that the release of Exhibits 2-4 and 6-7 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); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. 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). Thus, with the exception of basic information, which must be released, the department may withhold the Exhibits 2-4 and 6-7 pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

You also seek to withhold Exhibit 5 under section 552.108. However, Exhibit 5 is a video compilation of publicly aired news broadcasts pertaining to this incident. You do not provide any additional arguments explaining how release of this video would interfere with either current investigation. Accordingly, we find that Exhibit 5 may not be withheld under section 552.108, and, as this is the only exception raised for this exhibit, it 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

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<sup>1</sup>As our ruling on Exhibit 2 is dispositive, we need not address your remaining arguments against disclosure of this information.

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).

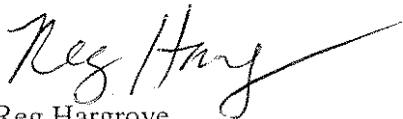
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/egg

Ref: ID# 291453

Enc. Submitted documents

c: M. Pickens  
5614 Finch Street  
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(w/o enclosures)