



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2007

Mr. Thomas A. Bailey
VIA Metropolitan Transit
P.O. Box 12489
San Antonio, Texas 78212

OR2007-13585

Dear Mr. Bailey:

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# 292024.

The VIA Metropolitan Transit ("VIA") received a request for records pertaining to a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) 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). 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). In this instance, you inform us that the submitted information relates to an investigation that was conducted by the VIA Transit Police Department Criminal Investigation Division (the "transit police") into an alleged crime committed against a VIA employee. We note that the transit police are a "law enforcement agency" for purposes of section 552.108 of the Government Code. *See* Transp. Code § 451.108. You further state that the responsive documents relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of the requested 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 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*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

You argue that some of the basic information is excepted from disclosure under section 552.132 of the Government Code. Section 552.132(d) permits an employee of a governmental body who is also a crime victim, as defined by subchapter B of chapter 56 of the Code of Criminal Procedure, to elect whether to allow public access to information held by the Office of the Attorney General or another governmental body that would identify or tend to identify the crime victim. Section 552.132(d) applies only to records held by the Office of the Attorney General or by the victim's employer in an employment capacity. *See* Gov't Code § 552.132(d) (describing procedures for employee to elect to withhold identifying information in the hands of employing entity). Pursuant to section 552.132(e), if an employee fails to make an election, the identifying information is excepted from disclosure for three years following the date the crime was committed. In this instance, the submitted information pertains to a crime against a VIA employee. VIA states that at the time of the request, the employee had not made an election under section 552.132(d). However, the submitted documentation shows the date of the crime was approximately one year prior to the request. Thus, we conclude any basic information identifying the employee is protected from disclosure pursuant to section 552.132 of the Government Code.

In summary, with the exception of basic information, VIA may withhold the submitted information pursuant to section 552.108 of the Government Code. Basic information that would identify the employee is protected from disclosure and must be withheld pursuant to section 552.132 of the Government Code. The remaining basic information must be released.

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).

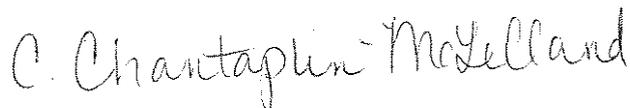
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/jb

Ref: ID# 292024

Enc. Submitted documents

cc: Ms. Karen Muñiz
Attorney at Law
222 South Flores Street
San Antonio, Texas 78204-1011
(w/o enclosures)