



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2007

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2007-15874

Dear Ms. Middlebrooks:

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#300487.

The Dallas Police Department (the "department") received a request for information related to a specified investigation. You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You claim that the information you have marked is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the

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.

release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you have marked relates to a pending criminal investigation and prosecution. We therefore agree that section 552.108(a)(1) is applicable to the information you have marked. *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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes a “detailed description of the offense.” *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have marked the entire narrative portion of the submitted incident report as information you seek to withhold under section 552.108. The remaining portions of the incident report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released. Accordingly, we determine that the department must release a sufficient portion of the narrative section of the incident report to encompass a detailed description of the offense, to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information at issue under section 552.108(a)(1). We note that the department has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

Section 552.1175 protects information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, and provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The department must withhold the marked information under section 552.1175 if the peace officer involved elects to restrict access to the information in accordance with section 552.1175(b). *Cf.* Open Records Decision No.670 at 6 (2001)

(section 552.117(a)(2) applicable to peace officer's cell phoner number only if cell phone service is paid for by officer with own funds). If the peace officer does not elect to keep this information confidential, it may not be withheld on this basis.

In summary, other than a sufficient portion of the narrative section of the incident report to constitute a detailed description of the offense, the department may withhold the marked information under section 552.108(a)(1) of the Government Code. The department must withhold the marked personal cell phone number under section 552.1175 of the Government Code if the peace officer involved elects to restrict access to the information in accordance with section 552.1175(b). The remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

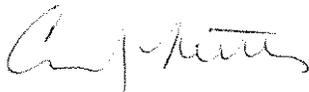
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 300487

Enc. Submitted documents

c: Mr. James Williams
9518 Ferguson Road, #2060
Dallas, Texas 75228
(w/o enclosures)