



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2008

Mr. Darrell G-M Noga
Fee, Smith, Sharp & Vitullo, L.L.P.
Three Galleria Tower
13155 Noel Road, Suite 1000
Dallas, Texas 75240

OR2008-01361

Dear Mr. Noga:

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# 300546.

The City of Coppell (the "city"), which you represent, received a request for two specified police reports. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request for information. The request seeks information pertaining to two specific police reports. Accordingly, any information which does not pertain to the specific reports is not responsive to the current request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next we will address your section 552.108 claim for the responsive information. Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibits 3,4,7, and 8 relate to a pending criminal prosecution. Based on your representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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, and you acknowledge, 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). Basic information includes the name, age, address, race, sex, occupation, social security number, and physical condition of the arrested person, the identification and description of the complainant, and the location of the crime and premises involved, but does not include driver’s license numbers. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information at issue from disclosure based on section 552.108(a)(1) of the Government Code.¹ We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.

We now turn to your remaining claimed exceptions for Exhibit 9. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 552.117(a)(1). Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or section 552.1175 of the Government Code.² *See id.* § 552.117(a)(2). Section 552.117 only applies to records that the governmental body is holding in an employment capacity. In this instance, the information you seek to withhold under section 552.117 is contained in law enforcement records. Thus, none of the personal information contained in Exhibit 9 may be withheld under section 552.117 of the Government Code.

We note however that section 552.1175 of the Government Code may apply. This section provides in part:

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

²“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(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(a), (b). Thus, the city must withhold the personal information we have marked in Exhibit 9 under section 552.1175 if the peace officer at issue elected to restrict access to this information in accordance with section 552.1175(b). However, if the city lacks the technical capability to redact the information subject to section 552.1175 in the submitted video, the city must withhold the video in its entirety. *See* Open Records Decision No. 364 (1983). If no election was made, the city may not withhold this information under section 552.1175.

We note that the submitted information contains the arrestees' social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.³ Gov't Code §552.147. Therefore, the city may withhold the arrestees' social security numbers pursuant to section 552.147.

In summary, the city may withhold the arrestees' social security numbers under section 552.147 of the Government Code. With the exception of Exhibit 9 and basic information, the city may withhold the remaining submitted information under section 552.108(a)(1). The city must withhold the information we have marked in Exhibit 9 under section 552.1175 of the Government Code if the peace officer at issue elected to restrict access to this information in accordance with section 552.1175(b); if the city lacks

³We note that 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 technical capability to redact the information subject to section 552.1175 in the submitted video, the city must withhold the video in its entirety. If no election was made, the city may not withhold this information under section 552.1175 and Exhibit 9 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 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 300546

Enc. Submitted documents

c: Ms. Virginia Buenostro
2908 W. Royal Lane
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(w/o enclosures)