



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2008

Mr. Norman Ray Giles  
Chamberlain, Hrdlicka, White, Williams & Martin  
Counsel for City of Pasadena  
1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2008-03201

Dear Mr. Giles:

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# 304266.

The Pasadena Police Department (the "department"), which you represent, received three requests from the same requestor for all photographs taken by the department of a specified individual, all incident reports written by two named officers during a specified time period, and several categories of information generally pertaining to an excessive use of force complaint. You state that some of the requested information is the subject of a previous open records letter ruling. You claim that the remaining requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter

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<sup>1</sup>We 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.

No. 2007-13664 (2007). Based on your representation, we conclude that, to the extent information responsive to the current request is identical to the information previously requested and ruled upon by this office, and the law, facts, and circumstances on which the prior ruling was based have not changed, the department may continue to rely on that ruling as a previous determination and withhold or release any such information in accordance with Open Records Letter No. 2007-13664. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information addressed in Open Records Letter No. 2007-13664, we will consider your arguments against disclosure.

Section 552.108(a)(1) 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 claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that section 552.108 is generally not applicable to information relating to an internal administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). In this instance, you state that some of the submitted information relates to investigations being conducted by the Federal Bureau of Investigation, the Harris County District Attorney’s Office (the “district attorney”), and the department. We understand that the district attorney objects to the release of this information because it would interfere with the district attorney’s criminal investigation of this incident. In addition, you state that the remaining submitted incident reports relate to pending criminal investigations. Based on these representations and our review, we conclude that the release of the submitted 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. 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). Thus, section 552.108(a)(1) is applicable to the submitted information.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, which

includes a detailed description of the offense and arrest information, the department may withhold the submitted information pursuant to section 552.108(a)(1).<sup>2</sup>

In summary, to the extent the requested information is encompassed by Open Records Letter No. 2007-13664, the department must continue to rely on that previous ruling. With the exception of basic information, the department may withhold the remaining submitted information under section 552.108 of the Government Code.<sup>3</sup>

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

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<sup>2</sup>As our ruling is dispositive for this information, we need not address the applicability of your remaining claim against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

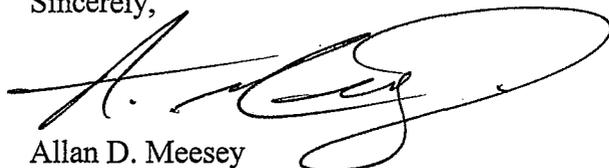
<sup>3</sup>We note that the basic information contains the arrestees' social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 304266

Enc. Submitted documents

c: Mr. Robert Crowe  
Houston Chronicle  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)