



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2008

Ms. Jerris Penrod Mapes
Assistant City Attorney
Killeen Police Department
402 North Second Street
Killeen, Texas 76541-5298

OR2008-03821

Dear Ms. Mapes:

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# 305535.

The Killeen Police Department (the "department") received a request for a copy of the police video, any and all records and reports, and any notes of the officers investigating a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1); 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case

and (2) this office is provided with a representation from the law enforcement entity with the law enforcement interest that the entity wishes to withhold the information. You state that the department has passed its investigation onto the Killeen Fire Department ("KFD") and that the KFD arson investigator "should have the opportunity to complete his investigation without the contents being released to the requestor or any other person who would request it." Although you state that the submitted information relates to a pending arson investigation by KFD, you do not tell us and we have not received any representation from KFD indicating that it actually objects to the release of the report at issue. Therefore, no information may be withheld under section 552.108. As you raise no other exceptions to disclosure, the submitted information must be released.¹

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).

¹Although the information contains information that is generally protected under privacy principals, we note that privacy lapses at death. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Furthermore, the requestor is the attorney representing the estate of the deceased individuals and has a special right of access to the information at issue. *See* Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 305535

Enc. Submitted documents

c: Ms. Kathryn Knotts
The Carlson Law Firm
P.O. Box 10520
Killeen, Texas 76547-0520
(w/o enclosures)