



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2008

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2008-06654

Dear Ms. Smith:

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# 309772.

The Department of Public Safety (the "department") received a request for information relating to incidents of biohazards, or suspected biohazards, delivered in the mail from 2002 to the present. You state that the department has released some responsive information. You claim that the remaining requested 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.

You claim that the submitted information is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted reports relate to ongoing criminal investigations. However, we note that one of the submitted reports pertains to an alleged terroristic threat that occurred on May 6, 2003. Therefore, the statute of limitations has already run for this offense. *See* Penal Code § 22.07; *see also* Crim. Proc. Code, arts. 12.01, .02. You have neither informed us that any criminal charges were filed within the limitations period nor otherwise adequately explained how or why the release of the report relating to the May 6, 2003 offense would interfere with the detection, investigation, or prosecution of crime. Gov't Code

relating to the May 6, 2003 offense under section 552.108(a)(1) of the Government Code. Rather, this report must be released.

However, we note that the statute of limitations has not run for the alleged terroristic threat that occurred on February 23, 2005. See Crim. Proc. Code, art. 12.04. We therefore conclude that the release of this information would interfere with the detection, investigation, and 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*. See 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the February 23, 2005 report, which we have marked, under section 552.108(a)(1) of the Government Code.

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 black ink, consisting of a stylized capital letter 'B' followed by a horizontal line extending to the right.

Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 309772

Enc. Submitted documents

c: Mr. Scott Green
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(w/o enclosures)