



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2008

Mr. Bryan McWilliams  
Assistant City Attorney  
City of Amarillo  
200 Southeast Third Avenue  
Amarillo, Texas 79101-1514

OR2008-07144

Dear Mr. McWilliams:

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# 311995.

The Amarillo Police Department (the "department") received a request for all photographs and documents pertaining to a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies when information is made confidential by statute. Section 414.009 of the Government Code provides in pertinent part:

(a) A person who is a member or employee of the [crime stoppers advisory council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009. You state that the information in Exhibit A represents reports, tips, and information submitted to a crime stoppers organization. Based upon this representation, we conclude that the information in Exhibit A is confidential under section 414.009 and must be withheld based on section 552.101.

Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. You state that the submitted photographs are autopsy photographs. You state that the deceased individuals did not die in police custody. You also state that the request was not made with a subpoena or other authority of law. Thus, because neither exception to confidentiality applies to the information in this instance, the submitted autopsy photographs are confidential under article 49.25 of the Code of Criminal Procedure and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this section is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). This office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You inform us that the submitted information in Exhibit B consists of information disseminated via the Texas Law Enforcement Telecommunications System ("TLETS"). You state that this information is for criminal justice purposes only and that "disclosure of this type of information may give suspects or others engaged in illegal activity advance knowledge as to leads and suspect inquiries possibly hindering an investigation." However, having considered your arguments and having reviewed the information in Exhibit B, we conclude that the department has not established that the release of this information would interfere with law enforcement. Accordingly, we determine that the department may not withhold the submitted information in Exhibit B under section 552.108(b)(1) of the Government Code.

In summary: (1) the information in Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with section 414.009 of the Government Code; and (2) the submitted autopsy photographs must be withheld under section 552.101 of the Government Code in conjunction with article 49.25 of the Code of Criminal Procedure. The remaining submitted 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 black ink, appearing to read 'Jessica J. Maloney', with a long horizontal flourish extending to the right.

Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 311995

Enc. Submitted documents

c: Ms. Rebecca G. Hazlewood  
3500 Mockingbird, Apt. 11  
Amarillo, Texas 79109  
(w/o enclosures)