



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2008

Mr. R. Kinley Hegglund, Jr.
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2008-07181

Dear Mr. Hegglund:

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# 311084.

The Wichita Falls Police Department (the "department") received a request for information related to a named individual. The requestor subsequently narrowed the request to ten specified cases involving the named individual. *See* Gov't Code § 552.222(b) (governmental body may ask requestor to clarify request). You state the department has released to the requestor front page information pertaining to the requested cases.¹ 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.

Initially, we note that you have not submitted three of the specifically requested reports for our review. To the extent this information existed on the date the department received this request, we assume you have released it. If you have not released such information, you must do so at this time.² *See* Gov't Code §§ 552.301, .302.

¹We assume that the "front page" information you have released is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (requiring the release of basic information about an arrested person, and arrest, or a crime); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

We next note that you have submitted two reports that were not among the ones specifically requested. We have marked these reports, which the department need not release in response to this request and this ruling will not address that information. *See Bustamante*, 562 S.W.2d 266.

Section 552.108 of the Government Code provides in pertinent part: “(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this case, you have provided an affidavit from an officer with the department stating that the information at issue relates to closed investigations that did not result in convictions or deferred adjudications. Based upon your representations and our review, we agree that section 552.108(a)(2) is applicable to the information at issue. Thus, with the exception of the basic front page offense and arrest information, which you state you have already released, the department may withhold the submitted responsive information from disclosure based on section 552.108(a)(2) 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 311084

Enc. Submitted documents

c: Ms. Krystle Hooper
Habern, O'Neil, Buckley & Pawgan, L.L.P.
P.O. Box 8930
Huntsville, Texas 77340
(w/o enclosures)