



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2008

Ms. Valecia R. Tizeno
First Assistant City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR2008-07745

Dear Ms. Tizeno:

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# 312229.

The Port Arthur Police Department (the "department") received a request for information pertaining to a specified incident. You state that you have released some of the requested information to the requestor. You claim that the submitted incident report is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted report. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the department did not comply with the procedural requirements of the Act in requesting our decision. The requestor asserts that the department failed to comply with subsections 552.301(d), 552.301(e)(1)(D), 552.301(e)(2), and 552.301(e-1) of the Government Code. Section 552.301(d) requires a governmental body that requests an attorney general decision to withhold information to provide the requestor, within ten business days of receipt of the request for information, a written statement that it has asked for an attorney general decision. Gov't Code § 552.301(d)(1). Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this

office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(D). In addition, pursuant to section 552.301(e)(2), a governmental body must label the copy of the information at issue to indicate which exceptions under the Act apply to which parts of the copy. *Id.* § 552.301(e)(2). Finally, section 552.301(e-1) requires a governmental body to send a copy of its comments submitted to this office pursuant to section 552.301(e)(1)(A) to the requestor. *Id.* § 552.301(e-1).

In this instance, the department received the present request for information on March 18, 2008. Accordingly, the department was required to request a decision from this office by April 1, 2008, and to submit the specific information requested by April 8, 2008. *See id.* §§ 552.301(b), 552.301(e)(1)(D). The submitted documents reveal that the department requested a ruling from our office and submitted the specific information requested by mail bearing a postmark of April 1, 2008. *See id.* § 552.308(a) (ten-day requirement met if request bears post office cancellation mark indicating time within ten-day period). The department also labeled the submitted documents to indicate the information for which it asserted section 552.108 of the Government Code. *See id.* § 552.301(e)(2). In addition, the department sent its written comments asking for an attorney general decision to the requestor by certified mail on April 1, 2008. *See id.* §§ 552.301(d), 552.301(e-1). Upon consideration of the requestor's comments and review of the submitted documents, we conclude that the department fully complied with the requirements of section 552.301 in requesting this decision.

We now address the department's argument against disclosure of the submitted incident report. Section 552.108(a)(2) 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 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). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states that the submitted incident report pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Based on the department's representation and our review of the information, we agree that section 552.108(a)(2) is applicable to the submitted incident report.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Basic information includes, among other things, the arrestee's name, race, sex, age, and address. *See id.* at 179-80, 185-87; *see also* 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 submitted incident report under 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).

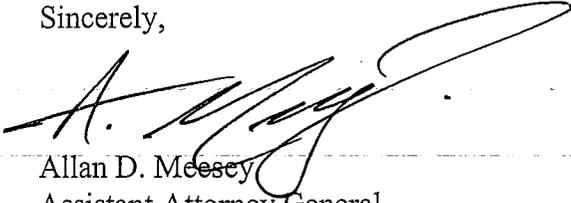
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "A. Meesey", written over a horizontal line.

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/mcf

Ref: ID# 312229

Enc. Submitted documents

c: Mr. Donald M. Hudgins
The Hudgins Law Firm
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(w/o enclosures)