



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2008

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, PC
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2008-08563

Dear Mr. Schneider:

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# 313583.

The City of Magnolia (the "city"), which you represent, received a request for information pertaining to a specified incident involving a named peace officer. You state that the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in 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 the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²You also raise section 552.101 of the Government Code in conjunction with section 552.130. However, we note that section 552.101 does not encompass other exceptions found in the Act.

Gov't Code § 552.108(a)(2). Subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. *Id.* A governmental body claiming subsection 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. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted report pertains to a concluded investigation that did not result in conviction or deferred adjudication. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable in this instance.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 a “detailed description of the offense. *See* 531 S.W.2d at 187; ORD 127. We note that you have essentially marked the entire narrative portion of the submitted report as information you seek to withhold under section 552.108. However, the remaining portions of the report do not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released. Therefore, we determine that the city must release a sufficient portion of the narrative section of the submitted report to encompass a detailed description of the offense. Accordingly, with the exception of basic information, which must include a detailed description of the offense, the city may withhold the submitted report under section 552.108(a)(2) of the Government Code.³

You state that the city will redact the personal information of the named peace officer under section 552.117(a)(2) in accordance with the previous determination issued by this office in Open Records Decision No. 670 (2001).⁴ We note, however, that the protections of section 552.117 of the Government Code only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). In this instance, the named officer's personal information is contained in an offense report. Thus, the peace officer's personal information, which is included in the basic information, is not information that the city holds in its capacity as an employer.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴*See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

Therefore, this information may not be withheld pursuant to Open Records Decision No. 670.

However, the named officer's personal information may be excepted under section 552.1175 of the Government Code, which provides in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Thus, if the named officer elects to restrict access to his personal information in accordance with section 552.1175(b), then the city must withhold this information from the basic information under section 552.1175. To the extent the officer at issue does not elect to keep his personal information confidential, it may not be withheld on this basis.

In summary, with the exception of basic information, which must include a detailed description of the offense, the city may withhold the submitted report under section 552.108(a)(2) of the Government Code. If the named officer elects to restrict access to his personal information in accordance with section 552.1175(b), then the city must withhold this information from the basic information under section 552.1175. The remaining basic information must be released.

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). If the governmental body does not file suit over 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,



Jennifer Luttrall

Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 313583

Enc. Submitted documents

c: Ms. Tana Ross
The Potpourri
c/o Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, PC
2 Riverway, Suite 700
Houston, Texas 77056-1918
(w/o enclosures)