



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2008

Ms. Jude Andrepont  
Assistant Records Supervisor  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2008-08965

Dear Ms. Andrepont:

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# 314989.

The Beaumont Police Department (the "department") received a request for a specified incident report. You state that you will release a portion of the requested information to the requestor. 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.

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 the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]
- (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)(1), (2). We note that section 552.108(a)(1) and section 552.108(a)(2) typically encompass two mutually exclusive types of information. Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, 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. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims 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. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

In this instance, you state that the submitted incident report relates to an ongoing criminal investigation and that the information is of the type that would be excepted from release under 552.108(a)(1). However, you also state that the report at issue "relates to an investigation that did not result (or has not resulted) in a conviction or deferred adjudication" and is of the type that would be excepted from release under section 552.108(a)(2). Further, the submitted report indicates that the case was exceptionally cleared because the victim no longer wished to pursue charges. Because you have provided this office with contradictory information, we find that you have failed to sufficiently demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2). *See Gov't Code* § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). We therefore conclude that the department may not withhold the submitted report under section 552.108 of the Government Code. As you claim no other exception to disclosure, the 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

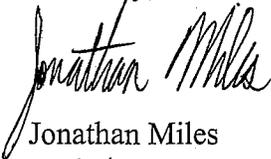
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 314989

Enc. Submitted documents

c: Mr. Eric R. Miller  
Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P.  
One American Place  
301 Main Street, Suite 1600  
Baton Rouge, LA 70801-1916  
(w/o enclosures)