



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 17, 2008

Ms. Cathie Childs  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR2008-09769

Dear Ms. Childs:

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# 316159.

The Austin Police Department (the "department") received a request for information relating to the requestor's arrest, specifically (1) the 911 call and CAD report and (2) the incident report and other documents relating to the arrest.<sup>1</sup> You claim that the 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's assertion that the department did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten

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<sup>1</sup>The requestor also sought (3) the arresting officer's test results from the Standardized Field Sobriety Test training and the name of the trainer and company that provided the training, and (4) IAD files on any sustained complaints against the arresting officer. You state that the requestor clarified his request to exclude the third category of information and agreed to accept the information that is public under section 143.089 of the Local Government Code in response to the fourth category. *See* Gov't Code 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

business days of receiving the written request. *See id.* § 552.301(b). The requestor states that he initially requested information related to his arrest in a written affidavit on January 22, 2008, in response to which the requestor received a video of his arrest. Further, the requestor states that he requested, in writing on February 22, 2008, the “complaint” referenced in the video that was the alleged basis of his traffic stop. However, the department represents that it did not receive a request from this requestor until April 28, 2008. The determination of the date that the department received the request for information is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision No. 522 at 4 (1990). The department represents that it received the request for information on April 28, 2008, and we note that its request for a decision was mailed to this office on May 12, 2008. Therefore, we conclude that the department complied with the procedural requirements of section 552.301(b).

Next, the requestor indicates that he was not properly notified of the department’s request for a ruling from this office as required by section 552.301(d) of the Government Code. *See* Gov’t Code § 552.301(d) (governmental body must provide requestor with copy of governmental body’s written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body’s failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. *See id.* § 552.302. As noted previously, the department states that it received the written request for information on April 28, 2008, and the department requested a decision from our office on May 12, 2008. Further, the submitted information indicates the department simultaneously sent a copy of the request for a decision to the requestor. However, the requestor asserts that the department did not send him a copy of the request for a decision until May 30, 2008. Again, we must rely upon the facts alleged to us by the governmental body requesting our opinion or upon those facts that are discernable from the documents submitted for our inspection. *See* ORD 522 at 4. Accordingly, we find that the department complied with the procedural requirements of section 552.301(d) in requesting this ruling. Therefore, we will address the department’s argument against disclosure.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending criminal matter that was dismissed but may be re-filed as the statute of limitations has not run. Based on your representation and our review of the submitted information, we conclude that release of this information would

interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to the requested information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the requested information under section 552.108(a)(1) 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). 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).

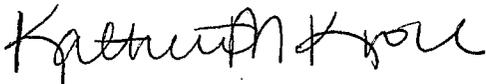
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Katherine M. Kroll  
Assistant Attorney General  
Open Records Division

KMK/eeg

Ref: ID# 316159

Enc. Submitted documents

c: Mr. Paul S. Meche  
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Carencro, Louisiana 70520  
(w/o enclosures)