



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

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

OR2008-10710

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# 317963.

The Austin Police Department (the "department") received a request for all radio transmissions and computer system messages involving a named officer for a specified time period. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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). A governmental body claiming section 552.108 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). You state that a portion of the submitted information relates to case number GO 2008-1340245, a pending criminal prosecution. Based on this representation, we conclude that the 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are

present in active cases). Therefore, the department may withhold the computer system messages we have marked and the portion of the audio recording that relates to case number GO 2008-1340245 under section 552.108(a)(1) of the Government Code. However, we find that you have failed to explain how release of any of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, you have not established that section 552.108(a)(1) applies to the remaining information. Accordingly, none of the remaining information may be withheld under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 does not apply to out-of-state motor vehicle record information. We have marked Texas motor vehicle record information in the remaining documents. We also note that the submitted audio recording contains a Texas driver's license number. Thus, the department must withhold the Texas motor vehicle record information that we have marked, as well as the Texas driver's license number contained in the audio recording, under section 552.130 of the Government Code.

In summary, the department may withhold the computer system messages we have marked and the portion of the audio recording that relates to case number GO 2008-1340245 under section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle record information that we have marked in the submitted documents, as well as the Texas driver's license number contained in the submitted audio recording, under section 552.130 of the Government Code. The remaining 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 317963

Enc. Submitted documents

c: Ms. Christina Phelps
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(w/o enclosures)