



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2008

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2008-11562

Dear Mr. Hager:

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# 323830.

The Colony Police Department (the "department"), which you represent, received a request for information pertaining to a specified arrest. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a court-filed document. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, the court-filed document must be released to the requestor, unless it is confidential under other law. Although you assert this information is excepted under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions within the Act and not "other law" that makes information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the court-filed document we have marked may not be withheld under sections 552.103

or 552.108, and as you raise no other exception to disclosure of this document, it must be released to the requestor.

Next, we note that the submitted information contains CRB-3 accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor provided the date of the accident and the name of one individual involved in the accident. Accordingly, the department must release the submitted CRB-3 forms pursuant to chapter 550 of the Transportation Code.

We now address your argument under section 552.108 of the Government Code for the remaining portions of the investigation file. Section 552.108 of the Government Code exempts from public 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state that the information at issue pertains to a pending criminal case, and that release of the information would interfere with this investigation. Based on your representations and our review, we conclude that section 552.108(a)(1) is applicable in this instance. 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).

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*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1).¹

In summary, the department must release: (1) the search warrant, which is made public under section 552.022(a)(17) of the Government Code; and (2) the CRB-3 forms that we

¹As our ruling is dispositive, we do not address your remaining argument against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991)..

have marked under section 550.065 of the Transportation Code. With the exception of basic, front page information, the department may withhold the remaining information from public disclosure 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), (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).

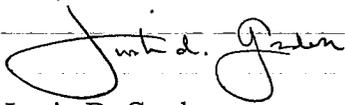
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Justin D. Gordon". The signature is written in a cursive style with a large initial "J" and "G".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 323830

Enc. Submitted documents

c: Ms. Stephanie Prentice
Smith & Cross
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(w/o enclosures)