



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2008

Ms. Lucinda J. Garcia  
Wood, Boykin & Wolter, P.C.  
615 North Upper Broadway, Suite 1100  
Corpus Christi, Texas 78477-0397

OR2008-16938

Dear Ms. Garcia:

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# 329863.

The Mathis Police Department (the "department"), which you represent, received a request for a specified incident report and two specified warrants. You state that the department does not possess the requested warrants.<sup>1</sup> You also state that you have released a portion of the requested information. You claim that a portion of the submitted information is not subject to the Act. You claim that the remaining submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, you claim that the information in Exhibit 5 consists of a record of the judiciary. Generally, the Act governs the disclosure of information maintained by or for a "governmental body." See Gov't Code §§ 552.002, .021. Although the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code

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<sup>1</sup>The Act does not require a governmental body to obtain information that is not held by or on behalf of the governmental body. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 267-68 (Tex. Civ. App.—San Antonio, 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

§ 552.003(1)(B); Open Records Decision No. 25 (1974). You state that the information in Exhibit 5 consists of a report created for the justice of the peace. To the extent the document is a record of the justice of the peace, this document is a record of the judiciary and is not subject to the Act. *See* Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .0035 (access to information maintained by or for judiciary governed by rules adopted by supreme court); TEX. R. JUD. ADMIN. 12 (public access to judicial records). Thus, if the document in Exhibit 5 is maintained solely by the judiciary, it is not subject to release under the Act and need not be released in response to the present request. However, to the extent a copy of the document in Exhibit 5 is maintained elsewhere by the department, the record is subject to the Act and may only be withheld if an exception to disclosure under the Act applies as described below.

Next, you claim that the remaining submitted information is subject to section 552.108(a)(2) of the Government code. This section excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if 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)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted incident report is related to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable to the submitted incident report.

We note, and you acknowledge, that 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 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that you have essentially highlighted the entire narrative portion of the submitted police 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. *See id.* Accordingly, we determine that the department must release a sufficient portion of the narrative section of the submitted police report to encompass a detailed description of the offense to satisfy the required release of basic information pursuant to *Houston Chronicle*. The department may withhold the remaining information it has highlighted in the submitted police report under section 552.108(a)(2) of the Government Code.

In summary, to the extent that the document in Exhibit 5 is maintained solely by the judiciary, it is not subject to release under the Act and need not be released in response to the present request. The department may withhold the remaining highlighted information in the submitted police report in Exhibit 4, provided a sufficient description of the offense is released along with the basic information.

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,

A handwritten signature in black ink, appearing to read "Greg Henderson", with a long horizontal flourish extending to the right.

Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID# 329863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)