



December 9, 1999

Mr. B.J. "Beni" Hemmeline  
Chief-Civil Division  
Office of the Criminal District Attorney  
P.O. Box 10536  
Lubbock, Texas 79408-3536

OR99-3567

Dear Mr. Hemmeline:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130432.

Lubbock County (the "county") received a request for information concerning an incident occurring in Lubbock County Jail in which an inmate was allegedly assaulted by jail officials. The request specifically seeks three categories of information: 1) information concerning charges filed against the inmate in regard to this incident; 2) information concerning criminal charges and administrative actions filed against specific jail and/or county officials stemming from the incident; and 3) information regarding the facts and circumstances surrounding the inmate's signing a settlement agreement.

You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of responsive documents.<sup>1</sup>

In regard to the requested records that concern the charges filed against Ollie Johnson, we agree that section 552.108(a)(2) of the Government Code applies. Section 552.108(a)(2) 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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You explain that the criminal charges filed against Ollie Johnson were dismissed on April 21, 1999. Consequently, the criminal investigation regarding those charges concluded in a result other than conviction or deferred adjudication. Based upon this representation, we find that most of the information responsive to this request is excepted from disclosure pursuant to section 552.108(a)(2).

Moreover, in regard to the requested records regarding any charges or actions filed against the county and jail officials, we agree that section 552.108(a)(1) applies. 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." You state that the requested information regarding the officials relates to an ongoing criminal case. Based upon this representation, we conclude that the release of this requested 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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, in regard to the information responsive to both request categories discussed above, you must release the type of information that is considered to be front page offense report information to the extent that it appears in the responsive information. Thus, with the exception of the basic front page offense information, the county may withhold the information regarding the charges filed against Ollie Johnson based on section 552.108(a)(2), and the information regarding the charges or actions filed against the officials based on section 552.108(a)(1). Although sections 552.108(a)(1) and (a)(2) authorize the county to withhold this information from disclosure, the county may choose to release all or part of the information that is not otherwise confidential by law. *See Gov't Code § 552.007.*

Next, we consider the third request category which is for information regarding the facts and circumstances surrounding the inmate's signing a settlement agreement. This category has six sub-parts itemizing specific pieces of information. You state that the county has no documents that are responsive to sub-parts 1-3, 5, and 6. The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under

a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Consequently, if neither the county nor any entity acting on behalf of the county has possession of documents responsive to sub-parts 1-3, 5, and 6 of the third request category, then the county has no obligation to create or produce such information.

Finally, you state that you intend to provide the requestor with the information requested in sub-part 4 of the third request category. Sub-part 4 seeks: "[t]he names, addresses, and phone numbers of all employees and/or representatives of Lubbock County who participated in the official decision to settle Ollie Johnson's claims." Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for the information is made. See Open Records Decision No. 530 at 5 (1989). Therefore, if any of the county employees referenced in subpart 4 made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made, then under section 552.117, the county must withhold those employees' home addresses, home telephone numbers, social security numbers, and information that reveals whether they have family members.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/nc

Ref: ID# 130432

Encl. Submitted documents

cc: Mr. John S. Powell  
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(w/o enclosures)