Office of the Attorney General · State of Texas
John Cornyn

January 23, 2001

Mr. Kevin E. Oliver
Cooper & Scully
900 Jackson Street, Suite 100
Dallas, Texas 75202

OR2001-0228

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143448.

The City of Coppell (the "city"), which you represent, received a request from a named individual for his "arrest records" for a specified date. You have submitted for our review as responsive to the request arrest report number 00-937. You indicate that the "front page" information and bond information for incident report number 00-51100 has been released to the requestor.[1] You assert 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.

In relevant part, section 552.108 provides:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:
>
> . . .

[1]You do not indicate whether any of the remaining information in incident report number 00-51100 is responsive to the request, and you have not submitted incident report number 00-51100 for our review. *See* Gov't Code § 552.301(e)(1)(D). To the extent the city has information responsive to the request that was not submitted to this office for review, we note that such information is subject to release to the requestor. Gov't Code §§ 552.301, .302.

> (2) 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). You state that the release of the information "would unduly interfere with the currently pending investigation and/or potential prosecution of the underlying criminal case. To that extent, we cite the clear applicability of section 552.108(a)(2), in that we are advised that investigation of the offense . . . has not yet resulted in a conviction or deferred adjudication of any person." Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); *see also 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); Open Records Decision No. 216 (1978). Subsection 552.108(a)(2), by its express language as quoted above, pertains to information that *did not result* in a conviction or deferred adjudication. This subsection therefore applies only where the matter has reached a *final result* other than conviction or deferred adjudication. You represent to this office that the case remains active and that the matter has not yet reached a final result other than conviction or deferred adjudication. Thus, subsection 552.108(a)(2) does not apply in this instance. You do not assert the applicability of any other subsection of section 552.108. Therefore, we conclude that none of the submitted information is excepted under section 552.108. As you have asserted the applicability of no other exception, the submitted arrest report must be released to the requestor.[2]

In summary, the city must release to the requestor, in its entirety, the information responsive to the request.

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

---

[2]The submitted arrest report contains information that is confidential and therefore not subject to release to the general public. However, the requestor in this instance has a special right of access to this information. *See* Gov't Code § 552.023.

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).

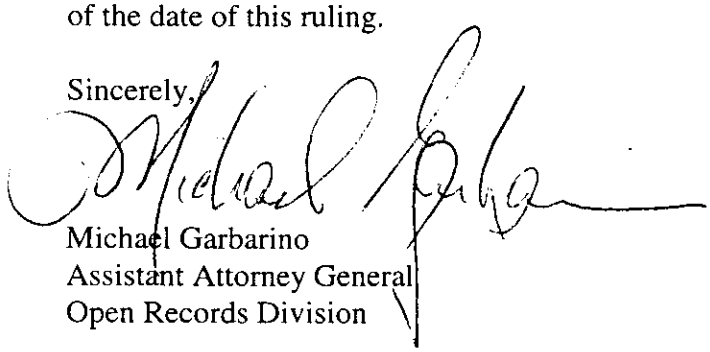
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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 General Services Commission 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 143448

Encl. Submitted documents

cc: Mr. Marc A. Howlett
3045 Grayson Drive #1114
Bedford, Texas 76021
(w/o enclosures)