



February 28, 2001

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2001-0749

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144505.

The Baytown Police Department (the "department") received a written request for all records pertaining to a certain arrest. You contend that the department is not required to release the requested information pursuant to section 552.028 of the Government Code. In the alternative, you contend that certain portions of an offense report are excepted from public disclosure pursuant to sections 552.108 and 552.130 of the Government Code.

Section 552.028 of the Government Code provides:

- (a) A governmental body is not required to accept or comply with a request for information from:
- (1) an individual who is imprisoned or confined in a correctional facility; or
 - (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.
- (b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Although you have submitted to this office evidence that the requestor, in requesting the records at issue, is acting as an agent of a criminal defendant, you have not explained, nor is it evident from the records at issue, that the criminal defendant is currently “imprisoned or confined in a correctional facility.” However, if the criminal defendant is in fact currently incarcerated, we agree that the department is not required to comply with the records request and accordingly may withhold the requested records in their entirety. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.--Waco 1998, pet. denied); *Moore v. Henry*, 960 S.W.2d 82 (Tex. App.--Houston [1st Dist.] 1996, no writ); Open Records Decision No. 656 (1997) (construing statutory predecessor). On the other hand, if the criminal defendant is not currently incarcerated, we next address your other arguments for withholding portions of the offense report at issue.

Section 552.108(a)(1) of the Government Code exempts from required 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.” Based on your representation that the information at issue relates to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(1) and that the department therefore may withhold the information you have highlighted pursuant to section 552.108(a)(1) of the Government Code.

Additionally, section 552.130(a)(1) of the Government Code requires the department to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the department must withhold all Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code.

In summary, if the criminal defendant on whose behalf the requestor is seeking the records at issue is currently incarcerated, the department may withhold the requested information in its entirety. If the criminal defendant is not currently incarcerated, the department may withhold the information you have highlighted in the submitted offense report pursuant to sections 552.108(a)(1) and 552.130(a)(1) of the Government Code, but 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 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).

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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 144505

Encl. Submitted documents

cc: Ms. Christine Gilbert
5316 Lorraine Drive
Baytown, Texas 77520
(w/o enclosures)