



July 31, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-3311

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150071.

The Texas Department of Public Safety (the "department") received a written request for two categories of information: 1) all documents pertaining to the department's "participation in the activities surrounding the execution of Gary Graham" and 2) all documents pertaining to all individuals "who may have been arrested, charged with or suspected of a crime" during demonstrations occurring during the scheduled execution. You state that the department has released some of the requested information, including the "basic front-page offense report information" pertaining to the arrests that occurred during the demonstrations. You have submitted to this office as responsive to the request two types of documents that you seek to withhold: investigative reports, with attachments, pertaining to five individuals who were arrested during the demonstration (the "arrest records") and internal department records discussing the security measures needed in anticipation of the demonstrations. You contend that the submitted information is excepted from public disclosure pursuant to section 552.108 of the Government Code.

We note at the outset that some of the information at issue is subject to section 552.022(a) of the Government Code, which provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law

Gov't Code § 552.022(a)(10). Among the documents you submitted to this office are various provisions of the Texas Administrative Code. These documents are specifically made public under section 552.022(a)(10). You argue that these documents are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception under the Public Information Act and is not "other law" for purposes of section 552.022 of the Government Code.¹ See Open Records Decision No. 586 (1991). Accordingly, we conclude that the department must release the Administrative Code provisions in their entirety.

We now address the applicability of section 552.108 of the Government Code to the remaining submitted information. Section 552.108(a)(1) excepts 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). Based on your representation that all of the criminal trespass charges against the five arrested individuals are still pending, we conclude that you have established the applicability of section 552.108(a)(1) to the arrest records at issue. The department, therefore, may withhold most of the information contained in the arrest records pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the department must release these types of information in accordance with *Houston Chronicle Publishing Company 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), regardless of whether the basic information is actually contained on the front page of an offense report. See Open Records Decision No. 127 (1976) (outlining categories of information contained in offense reports, arrest reports, and booking records subject to required public disclosure).

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

The second group of records you submitted to our office concern the security measures used during the execution in anticipation of the demonstrations. Section 552.108(b)(1) of the Government Code provides an exception for an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Generally, a governmental body claiming 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); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You explain that the release of this information

would interfere with the Department’s ability to provide similar security assistance in the future. In addition, since some of the assignments and techniques discussed in these documents are standard Department procedures, making them public could make it easier for someone to circumvent security measures at other events where the Department provides, or assists in providing, protection for event participants or members of the general public.

This office has previously established that information revealing security measures taken during an execution is excepted from public disclosure under the “law-enforcement exception.” *See Open Records Decision No. 413 (1984); see also Open Records Decision No. 506 (1988)* (“law-enforcement exception” protects cellular mobile phone numbers used by officials and employees with specific law enforcement responsibilities). After reviewing your arguments and the information at issue, we agree that the release of most of the information you seek to withhold from disclosure would interfere with law enforcement. Accordingly, we have only marked the submitted information that is not excepted from public disclosure under section 552.108(b)(1) and which, therefore, must be released to the requestor. We conclude that the department may withhold the remaining information related to the security measures.

In summary, the department must release the Texas Administrative Code provisions pursuant to section 552.022(a)(10). The department must also release all “basic information” from the submitted offense reports, regardless of where that information is located. The remaining submitted information may be withheld from disclosure pursuant to section 552.108 of the Government Code, except as marked.

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).

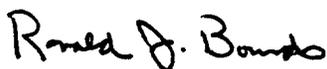
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/seg

Ref: ID# 150071

Enc. Submitted documents

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(w/o enclosures)