OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 23, 2001

Ms. Julie B. Tebbets
Ayers & Ayers
2460 One Main Place
1201 Main Street
Dallas, Texas 75202

OR2001-3745

Dear Ms. Tebbets:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151039.

The City of Balch Springs (the "city"), which you represent, received a request for all documents related to the arrest of a specific individual on a specified date. You state that you are releasing front page offense report information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes documents that have been filed with a court. Documents that have been filed with a court are public and must be released. *See* Gov't Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

We now turn to your arguments under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." 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 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 state that the requested information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the submitted 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). Thus, the city may withhold the submitted information from disclosure based on section 552.108(a)(1).

Although section 552.108(a)(1) authorizes you to withhold the information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. Because section 552.108 is dispositive, we do not address your additional arguments.

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).

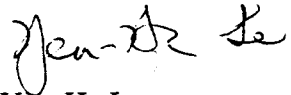
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 151039

Enc. Submitted documents

c: Ms. Toni Cassity
3013 Crystal Drive
Balch Springs, Texas 75180
(w/o enclosures)