



June 20, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin - Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-3350

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164631.

The City of Austin (the "city") received a request for copies of computer-aided dispatch sheets pertaining to a specified incident. The requestor also seeks documents pertaining to any actions that may have been taken against certain city police department officers by the city. You state that the city has released "front page" information to the requestor. See Gov't Code § 552.108(c) (stating that basic information regarding crime not excepted from disclosure under Gov't Code § 552.108); 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); Open Records Decision No. 127 (1976) (summarizing types of information considered basic information, including detailed description of offense). You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that this office previously ruled in Open Records Letter No. OR2002-0583 (2002) that the city must release information pertaining to the investigation of the incident that is the subject of the present request. See Open Records Letter No. OR2002-0583 (2002). We also note that the city has filed a lawsuit against the Office of the Attorney General over the release of the documents in question and that this suit is now pending before the 250th Judicial District Court in Travis County. See *City of Austin v. John Cornyn, Attorney General of the State of Texas et al.*, No. GV200788 (250th Dist. Ct., Travis County, Tex.,

filed Feb. 20, 2002). In light of the pendency of this litigation, it would be inappropriate for this office to opine on this portion of the present request at this time. Accordingly, we are closing our file on your present request with respect to the submitted internal affairs investigation without a finding and will allow the court to resolve the issue of whether this particular information must be released. We advise that you await the resolution of this case to determine whether the city must withhold the information at issue from disclosure.

You also claim that the submitted computer-aided dispatch sheets are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

...

(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). Section 552.108(a)(2) protects records pertaining to a criminal investigation or prosecution that concluded in a final result other than conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the computer-aided dispatch sheets pertain to a criminal investigation that did not result in conviction or deferred adjudication. However, we note that the information contained within these sheets is substantially the same as that information specifically held to be public in *Houston Chronicle*. *See generally* Open Records Decision Nos. 394 (1983) (finding information contained in radio logs and radio cards no different from types of information held public in *Houston Chronicle*), 366 at 1 (1983). Therefore, we conclude that the city may not withhold any information contained within these computer-aided dispatch sheets from disclosure pursuant to section 552.108(a)(2) of the Government Code.¹

However, the computer-aided dispatch sheets contain some motor vehicle information that may be subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an

¹ We note that "basic information" may not generally be withheld from disclosure under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

agency of this state. Gov't Code § 552.130. We note, however, that the protection offered by section 552.130 lapses upon death. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Thus, if the license plate number that we have marked in the computer-aided dispatch sheets is a Texas license plate number that was issued to an individual who was not deceased at the time that the city received the present request, we conclude that the city must withhold that license plate number from disclosure pursuant to section 552.130 of the Government Code.

In summary, we will allow the court to resolve the issue of whether the submitted internal affairs investigation documents must be released. If the license plate number that we have marked in the computer-aided dispatch sheets is a Texas license plate number that was issued to an individual who was not deceased at the time that the city received the present request, the city must withhold that license plate number from disclosure pursuant to section 552.130 of the Government Code. The city must release to the requestor the remaining information contained within the computer-aided dispatch sheets.

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).

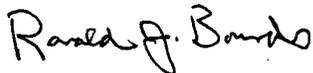
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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/seg

Ref: ID# 164631

Enc. Marked documents

cc: Mr. Jorge G. Pineda
Law Office of Jorge G. Pineda
2211 South IH35, Suite 107
Austin, Texas 78741
(w/o enclosures)