



August 20, 2002

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2002-4583

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167314.

The City of Rowlett Police Department (the "department"), which you represent, received a request for "all files, records, and any other documents in the possession of the [department]" pertaining to the Routier case, including "access to all original physical evidence." You state that a portion of the requested information has been transferred to the Dallas County District Attorney (the "district attorney") and is therefore not in the department's possession. You advise us that such information is being addressed in another request to this office, which has been assigned ID# 167403.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Before considering the exceptions that you claim except the requested information from public disclosure, we will address your assertion that the tangible physical items that were requested do not constitute public information. This office has ruled that tangible physical items are not the type of information contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, we agree that the tangible physical evidence collected as part of the department's investigation is not public information as that term is defined in section 552.002 of the Government Code. We, therefore, determine that the tangible physical evidence is not information made public by section 552.021 of the Government Code.

Next, we note that a governmental body that wishes to withhold requested information must provide to the Attorney General a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy, no later than fifteen days after the governmental body receives the written request for information. Gov't Code § 552.301(e). You inform us that the department received the request for information on May 30, 2002. You did not, however, submit to this office copies or representative samples of the specific information that was requested until June 27, 2002, well after the expiration of the fifteen business day period mandated by section 552.301(e) of the Government Code. You therefore failed to comply with the requirements of Government Code section 552.301. If the governmental body does not comply with the requirements of section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.103 is a permissive exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of section 552.103 and 552.111). Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness.

The application of section 552.101 may present a compelling reason to overcome the presumption of openness. Because you assert that the requested information is excepted from disclosure under section 552.101, we will consider your argument. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that "[t]here are various exceptions which would apply [to the requested information] under the Code of Criminal Procedure." However, you do not cite to any particular law to support your argument, nor are we aware of any law that would make this information confidential. Thus, the submitted information may not be withheld under section 552.101 of the Government Code.

We observe that the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991). You assert that the documents at issue have been forwarded to the

district attorney and that the matter is still under active prosecution. In separate correspondence to this office, the district attorney represents that release of the requested information would interfere with the investigation and prosecution of the case. See Open Record Decision Nos. 372 (1983) (deciding that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 108 may be invoked by any proper custodian of information that relates to the incident), 474 (1987) (same), 586 (1991) (deciding that the need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Although you did not demonstrate the applicability of section 552.108 to the requested information within the fifteen-day time period prescribed by section 552.301 of the Government Code, we conclude that the need of another governmental body to withhold the requested information under section 552.108 provides a compelling reason for nondisclosure of the information. Open Records Decision No. 586 (1991).

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 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). Based upon your representations as well as those provided by the district attorney, we conclude that the release of the requested 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 department may withhold the requested information under section 552.108 on behalf of the district attorney.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 167314

Enc. Submitted documents

c: Ms. Jacqueline E. Coleman
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(w/o enclosures)