



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 24, 2003

Mr. John D. Lestock  
Assistant City Attorney  
City of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

OR2003-1176

Dear Mr. Lestock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177405.

The Paris Police Department (the "department") received a request for all reports and witness statements for case number 2002-28526.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 provides in pertinent part:

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<sup>1</sup> We note that the City of Paris requested a decision from this office in relation to a previous request for information from the same requestor. That request for a decision resulted in Open Records Letter No. 2002-6766 (2002). In the previous request for information, the requestor had sought the offense report and witness statements for case number 2002-28169, and the complaint card for case number 2002-28526. However, the city submitted to this office the offense report and witness statements for case number 2002-28526 and the call screen for case number 2002-28169. As a result, this office found that the city had not submitted the requested information in accordance with section 552.301(e), and that the information must therefore be released pursuant to section 552.302. You subsequently explained that the department did not possess the information as stated in the written request, and that the submitted information was provided to this office after correcting the requestor's case numbers. You represent that you did not release to the requestor the information you had submitted because it was not responsive to the request, but encouraged the requestor to submit another request for information if she was still interested in receiving information related to the cases. The instant request for information ensued.

a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(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)(1), (2). Generally speaking, subsections 552.108(a)(1) and (a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information relating to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(1) 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 the detection, investigation or prosecution of crime. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, a governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that the submitted information relates to an open criminal case and that release of the information could interfere with any future prosecution. Based on these representations, we conclude that the release of the information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *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); Open Records Decision No. 216 at 3 (1978).

Section 552.108 does not, however, except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" offense and arrest report information held to be public in *Houston Chronicle*. The department must therefore release basic information, whether or not the information actually appears on the front page of a police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information relating to the open criminal case under section 552.108(a)(1). As section 552.108 is dispositive, we need not address your claim under section 552.101.

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 Dep't of Pub. 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 that reads "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 177405

Enc. Submitted documents

c: Ms. Susan Jane Wells  
2370 Ballard  
Paris, Texas 75460  
(w/o enclosures)