



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 14, 2003

Ms. Jan Clark
Assistant City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR2003-1751

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177883.

The San Marcos Police Department (the "department") received a request for a "discovery packet" related to a particular case, to include the offense report, witness statements, and any other information pertaining to the case.¹ The department subsequently received a second request for a specified police report related to the same case. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the

¹ We note that the first requestor in his request letter states that he is making his second formal request for the information at issue. He states that his original request "was addressed to the Hays County District Clerk's office with a courtesy copy to the [department]." Because the original request was sent to the department only as a "cc," we find that the department was not required to seek a ruling from our office with respect to this request, and therefore, did not fail to comply with section 552.301 of the Government Code with regard to the original request. *See* Gov't Code §§ 552.301(a), (b) (governmental body that receives written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the Public Information Act's (the "Act's") exceptions must ask for decision from attorney general about whether information is within that exception within ten business days after date of receiving request). However, we also note that the requestor states that he was informed by the department with regard to the original request that the request needed to be made directly to the department's Records Department division. We note that generally, a request for information need not name the Act nor be addressed to a governmental body's officer for public information in order to be a valid request for information under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974) (where request has been directed to responsible person in position of authority, governmental body cannot ignore request simply because it may not have been directed to legal custodian of records). Furthermore, a hyper-technical reading of the Act does not effectuate the Act's purpose. *See id.*

Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 of the Government Code states that 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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the requested information pertains to an open and active criminal investigation. Based on this representation, 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).

However, section 552.108 does not 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 release basic information, including a detailed description of the offense, 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 pending investigation under section 552.108(a)(1). As section 552.108 is dispositive, we do not address your claim under section 552.130.

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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 177883

Enc. Submitted documents

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