



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 24, 2003

Ms. Genevieve G. Stubbs
Senior Associate General Counsel
The Texas A&M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2003-1992

Dear Ms. Stubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178266.

The Texas Forest Service (the "TFS") received two requests for reports and field notes, including stump counts, for the years 1980 through 2002 and files pertaining to timber thefts for the same time frame. Subsequently, the TFS received a third request for "any and all files" pertaining to current timber theft investigations. You contend some of the requested information should be released only in accordance with Open Records Letter No. 2002-6043 (2002). You claim section 552.108 for the remaining portion of the information. We have reviewed the sample of information you submitted and we have considered your arguments.¹

You inform this office that you previously asked for a decision about some of the requested documents in response to a previous request for information. In Open Records Letter No. 2002-6043, we concluded the TFS could withhold some of the information under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. You explain that the circumstances regarding these criminal investigations remain the same. As the TFS has met

¹ We 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.

the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001), the TFS must release or withhold this information in accordance with Open Records Letter No. 2002-6043.²

Next, we address your section 552.108 assertion for the remainder of the requested information that was not at issue in Open Records Letter No. 2002-6043. 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).

To establish the TFS qualifies as a law enforcement agency eligible to claim section 552.108, you inform us that the duties and responsibilities of the TFS director include enforcement of laws pertaining to the protection of forests and woodlands and prosecution of violations of those laws. *See* Educ. Code § 88.102. Further, you explain the TFS employs peace officers to carry out the enforcement duties of the agency. *See* Educ. Code § 88.102. Upon completing timber theft investigations, you state the TFS forwards all relevant documents to the appropriate district attorney, who presents the cases to a grand jury. Based on your arguments and the supporting documentation you submitted, we agree the TFS qualifies as a law enforcement agency for the purposes of section 552.108.

You inform us this information pertains to pending investigations of various district attorneys.³ Additionally, the TFS has submitted a letter from Ms. Cindy Garner of the Houston County District Attorney’s Office in which she expresses her concern over the release of information created subsequent to the request for information at issue in Open Records Letter No. 2002-6043. Therefore, we believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.* Thus, the TFS may withhold information relevant to pending investigations that came into existence after the TFS received the original request for timber theft information under section 552.108(a)(1) of the Government Code.

² The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

³ An Incident Action Plan is included in the representative sample. This set of documents is not responsive to the requests for timber theft information. Thus, this decision does not address the releasability of this information.

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 TFS may withhold the remaining requested information from disclosure based on section 552.108(a)(1). The TFS 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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 178266

Enc: Submitted documents

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