



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 27, 2003

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2003-2089

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178496.

The Texas Department of Transportation (the "department") received two requests for information pertaining to a specified investigation conducted by the Texas Rangers. You claim that some of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) 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 some of the submitted reports, which you have marked, in part, as excepted from disclosure under section 552.108(a)(1), pertain to criminal investigations that are still ongoing. Based on our review of your representations and these

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<sup>1</sup> 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.

particular reports, we find that the release of most portions of these particular reports "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we agree that section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. See Gov't Code § 552.108(a)(2). You state that the remaining submitted report, which you have marked, in part, as excepted from disclosure pursuant to section 552.108(a)(2), pertains to an investigation that was closed with no criminal charges filed. Therefore, we understand the department to contend that this report relates to a case that has concluded in a final result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. See Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). See Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestors from all of the submitted reports, we conclude that the department may withhold the submitted reports pursuant to sections 552.108(a)(1) and (a)(2) of the Government Code.

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

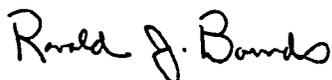
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 178496

Enc. Submitted documents

cc: Ms. Kim Horner  
Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265-5237  
(w/o enclosures)

Mr. Mike Lee  
Fort Worth Star-Telegram  
3201 Airport Freeway, Suite 108  
Bedford, Texas 76021  
(w/o enclosures)