



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 2, 2003

Mr. James J. Savage
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-2231

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178724.

The Harris County Constable, Precinct 5 (the "constable") received a request for all documentation pertaining to the complaint filed by the requestor against a named constable employee in 2002. You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information submitted.

Initially, we note that the submitted materials include information made public by section 552.022 of the Government Code. This section provides several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law." In pertinent part this section reads

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1), (2). The submitted information consists of completed investigations subject to the purview of section 552.022(a)(1). This information is therefore subject to required public disclosure, except to the extent that any of this information is expressly confidential under other law or excepted by section 552.108.

You claim that all of the submitted information, including the information regarding the Internal Affairs Investigation (the "IAD investigation"), is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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.

The IAD investigation relates to allegations of illegal and inappropriate conduct while on duty that were investigated and closed without further action due to the lack of sufficient evidence to sustain the complaint. You do not inform us, however, and it does not otherwise appear to this office that the submitted information relates to a criminal investigation by the constable. We therefore conclude that the constable has not demonstrated that the IAD investigation is excepted from disclosure under section 552.108. *See* Gov't Code § 552.108(a)(2), (b)(2); *see also Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (stating that statutory predecessor to section 552.108 was not applicable where no criminal investigation or prosecution of police officer resulted from internal affairs investigation); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation). As the IAD investigation was not created in conjunction with a criminal investigation, the constable may not withhold any of the IAD investigation pursuant to section 552.108.

However, we note that the IAD investigation contains information protected by section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, personal pager numbers, and family member information of peace officers, regardless of whether the officer elected confidentiality under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold the home address, home telephone number, personal cellular telephone number, personal pager number, social security number, and family member information of a peace officer under section 552.117(2)). We have marked the information within the IAD investigation that is subject to section 552.117(2) and must be withheld.

With regard to the remaining responsive information, based on the information you provided, we understand you to assert that this information pertains to two cases that concluded in results other than convictions or deferred adjudications. Therefore, we agree that section 552.108(a)(2) is applicable to the remaining responsive 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 Publishing 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). You state that the basic information has been provided to the requestor. We note that you have the discretion to release all or part of the remaining responsive information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the constable must release the information we have marked pertaining to the IAD investigation, with the exception of the personal information that we have marked that the constable must withhold pursuant to section 552.117. The constable may withhold the remaining responsive information from disclosure based on section 552.108 with the exception of the basic front page offense and arrest information.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 178724

Enc: Submitted documents

c: Mr. Clifton E. Stash
20038 Fort Bowie Court
Katy, Texas 77449
(w/o enclosures)