



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Mr. Robert E. Hager
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1800 Lincoln Plaza, 500 N. Akard
Dallas, Texas 75201

OR2003-2344

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179233.

The City of Rowlett (the "city"), which you represent, received five requests for various information related to the arrest of Christopher Shane Johnson, including (1) audio tapes of any and all 911 calls or radio dispatch transmissions; (2) copies of video and audio tapes of the tests given and arrest; (3) copies of the police incident report; (4) results of a breathalyzer test; and (5) number and copies of warrants for Johnson's arrest, including dates, where issued, and for what offense. You state that redacted copies of the arrest report will be provided. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that you have redacted from the offense report the names of any witnesses, the accused's social security number, the officer's entire narrative report, and the name, address and telephone numbers of the officers involved in the incident under sections 552.101 and 552.117 of the Government Code. You also state that "[t]he redaction of the social security number, driver's license number, and home address of the accused is protected under federal law and/or State law, and, are excepted from disclosure." Further, with regard to the remainder of the arrest report, you state that you are withholding the narrative and tapes

under sections 552.103, 552.107 and 552.108 of the Government Code. We will first address your argument against disclosure under section 552.108 of the Government Code.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested arrest report, video tape, and audio tape relate to a pending criminal investigation and state that the Rowlett Police Department will seek prosecution. We therefore believe that the release of this offense report and the submitted audio and video tapes "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 does not except 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, you may withhold the requested arrest report and tapes from disclosure based on section 552.108(a)(1). We note that basic information includes the arrestee's social security number, address, a detailed description of the offense, and the names of the arresting officers. *See* Gov't Code § 552.108; *see also* ORD 127 (1976). This information, therefore, should not be redacted. We also note that the identification and description of witnesses and the results of blood and other lab tests are protected by section 552.108. *See id.* You have the discretion to release all or part of the remaining information in the requested arrest report that is not otherwise confidential by law. Gov't Code § 552:007.

You assert that certain information you redacted from the arrest report may be withheld under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." However, you have not directed our attention to any law, nor are we aware of any law, under which the information in question is considered to be confidential for purposes of section 552.101. *See, e.g.,* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Therefore, none of the information which you have redacted may be withheld under section 552.101 of the Government Code.

You also assert that certain information you redacted from the arrest report may be withheld under section 552.117 of the Government Code. Section 552.117 excepts from public

disclosure information that relates to the home address, home telephone number, or social security number of a current or former official or employee of a governmental body, except as otherwise provided by section 552.024, or of a peace officer regardless of whether the officer complies with section 552.024. Section 552.117 also excepts from disclosure information which reveals whether that person has family members. As stated above, the identification and description of witnesses (who, in this case, are peace officers) are protected under section 552.108 of the Government Code. Furthermore, section 552.117 is inapplicable to the other information redacted from the arrest report and therefore may not provide a basis for withholding the redacted information.

We note that you have redacted a Texas driver's license number from the arrest report. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold the driver's license number, which you have marked, pursuant to section 552.130.

We now turn to your arguments regarding the narrative on the arrest report. You seek to withhold the narrative under section 552.103 of the Government Code. However, a detailed description of the offense, which is basic information held to be public in *Houston Chronicle*, generally is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). The city may not, therefore, withhold a detailed description of the offense under section 552.103.

You also seek to withhold the narrative under section 552.107 of the Government Code. Section 552.107(1) excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" Section 552.107(1) protects an attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. Open Records Decision No. 574 at 5 (1990). As the arrest narrative is neither an attorney's communication of legal advice or opinion to the client nor confidential communications from a client to an attorney, it is not a privileged attorney-client communication that may be withheld under section 552.107.

You also assert that portions of the request made by M.L. Curtis do not request any documents but pose questions to be answered, and the city is not required to answer questions of fact or provide a legal opinion. We agree that chapter 552 of the Government Code does not require a governmental body to answer factual questions. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request for information to any responsive information that is within the governmental body's possession or control. See Open Records Decision No. 561

at 8-9 (1990). Thus, the fact that a request for information is stated in the form of a question does not necessarily relieve the governmental body of its responsibility to make a good faith effort to identify information that is responsive to the request. In this instance, we find that the requestor's inquiries are sufficiently specific to enable the city to identify any responsive information that is within the city's possession or control. *See also* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or "magic words"). Therefore, the city must make a good-faith effort to respond to the requestor's request for information pertaining to other arrests of Mr. Johnson. To the extent the information exists, the city must release the information to the requestor. *See* Gov't Code §§ 552.301, .302.

To summarize, we conclude that: (1) the city must release basic information from the arrest report under section 552.108(c) of the Government Code; (2) the city must withhold the driver's license number under 552.130 of the Government Code; and (3) the city may withhold the remaining submitted information under section 552.108(a)(1) 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,



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Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 179233

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