



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 1, 2003

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2003-2918

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180275.

The Bexar County Sheriff's Office (the "sheriff") received a request for various categories of documents relating to a named deputy and his competence as a DWI traffic safety enforcement officer. The Bexar County District Attorney's Office (the "D.A.") claims that the requested information is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we next note that the submitted materials include information subject to 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;

The submitted materials include completed personnel evaluations that the department must release under section 552.022(a)(1), unless these records are excepted from disclosure under section 552.108 or expressly confidential under other law. Although you claim protection for the evaluations under section 552.103, section 552.103 is a discretionary exception to

disclosure that protects the governmental body's interests and may be waived. As such, this exception is not other law that makes information confidential for the purposes of section 552.022. Therefore, the completed personnel evaluations may not be withheld under section 552.103. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived). However, the completed evaluations may be withheld under section 552.108 or any other provision of law that makes the evaluations confidential. As you claim section 552.108 with regard to all of the submitted information, we will first address your argument under that exception.

Section 552.108(b)(1) of the Government Code provides an exception to required public disclosure for an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To withhold internal records and notations of law enforcement agencies and prosecutors under section 552.108(b)(1), a governmental body must demonstrate how release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 508 at 2 (1988).

You state that the submitted information pertains to a pending prosecution regarding a DWI arrest by the officer whose information is requested. You also indicate that the information requested, including the officer's evaluations, relates to the pending prosecution because it "pertains to the arresting officer's abilities, training and competency to evaluate and perform testing for situations involving driving while intoxicated." Having considered your arguments and reviewed the information at issue, we conclude that you have demonstrated that the release of the submitted information would interfere with a pending criminal case. *See* 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). Although 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), the submitted documents contain no such information. Therefore, the sheriff may withhold the submitted information in its entirety under section 552.108.

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# 180275

Enc: Submitted documents

c: Mr. Alex Hernandez
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(w/o enclosures)