



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 2, 2003

Mr. Matthew C. G. Boyle
Assistant City Attorney
Boyle & Lowry, L. L. P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2003-2976

Dear Mr. Boyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180358.

The Farmers Branch Police Department (the "department"), which you represent, received a request for 911 calls and radio transmissions concerning a specified service number and for any report relating to a particular traffic accident. You state that you have released some information to the requestor but claim that other requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsections 552.108(a)(1) and (a)(2) are mutually exclusive. Subsection 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information relating to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain, 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. *See* Gov't Code §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). On the other hand, 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.

You state that the incident at issue in the submitted information is currently under investigation and assert that release of this information would interfere with the department's investigation. Based on your representations, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See 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).

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*, including a detailed description of the offense. *See* 531 S.W.2d at 186-87. Thus, the department must release the types of information that are considered to be front page information, including a detailed description of the offense, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*); *see also* Open Records Decision No. 649 at 3 (1996) (discussing computer aided dispatch reports). Although section 552.108(a)(1) authorizes the department to withhold the remaining information from disclosure, the department may choose to release all or part of it that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We note that Texas-issued motor vehicle record information is excepted from disclosure under section 552.130 of the Government Code. This section provides that “[i]nformation is excepted from [required public disclosure] if the information relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” Therefore, the department must withhold the information that we have marked as being excepted from disclosure under section 552.130.

In summary, we have marked motor vehicle record information that must be withheld in accordance with section 552.130. Other than basic information, the department may withhold the remaining submitted information pursuant to section 552.108(a)(1).

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).

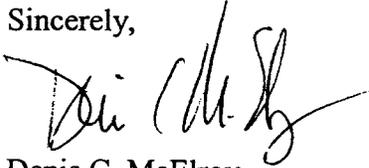
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with a large initial "D" and "M".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 180358

Enc. Submitted documents

c: Ms. Joanne Hurtekant
5956 Sherry Lane, #1000
Dallas, Texas 75225
(w/o enclosures)