



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 23, 2003

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2003-4277

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183162.

The College Station Police Department (the "department") received a request for information relating to a particular arrest, as well as any other "case number" relating to the individual arrested. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that in Open Records Letter No. 2003-4055 (2003), this office previously ruled on the extent to which most of the submitted information is public information, and ruled that information is excepted from disclosure under sections 552.108(a)(1) and (a)(2). As the current request seeks in part the identical information previously requested and ruled upon by this office in Open Records Letter No. 2003-4055, and you indicate that certain facts remain the same because case number 03-002422 is still pending, and the status of the cases which we found to be excepted under section 552.108(a)(2) have not changed, we conclude you may rely on that ruling as a previous determination and withhold the information that this office ruled was excepted from disclosure under section 552.108 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In relation to the remaining submitted information previously ruled upon, we find that the circumstances

on which the prior ruling was based have changed because the requestor in this instance is requesting information pertaining to himself. Therefore, we will address your claim under section 552.108 in relation to the information not previously ruled to be excepted under section 552.108.

Section 552.108 provides, in relevant part:

(a) 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:

(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 . . . .

Generally, 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), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 inform us that Exhibits C91-C93 pertain to a pending criminal prosecution. We therefore conclude that section 552.108(a)(1) is applicable to these Exhibits because the release of this 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, 186-87 (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). You represent that Exhibits C39-C82 and Exhibits C87-C89 pertain to investigations that are closed and did not result in conviction or deferred adjudication. We understand you to assert that these investigations concluded in final results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibits C39-C82 and Exhibits C87-89.

Section 552.108 does not, however, except from disclosure "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*, 531 S.W.2d 177. *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Therefore, the department must release

basic information pertaining to each requested case. The department may withhold the remaining submitted information pursuant to the previous determination in Open Records Letter No. 2003-4055, and pursuant to section 552.108. As we are able to make these determinations, we need not address your remaining arguments.<sup>1</sup>

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).

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<sup>1</sup> We note that basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991). We further note that Article 39.14 does not expressly make information confidential, and we generally do not address discovery and evidentiary rules that may or may not be applicable to information submitted to our office by a governmental body. See Open Records Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Public Information Act).

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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/sdk

Ref: ID# 183162

Enc. Submitted documents

c: Mr. Matthew Lyle Addison  
350 Rebel Road  
Livingston, Texas 77351  
(w/o enclosures)