



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 15, 2003

Mr. Charles Rowland
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106

OR2003-4898

Dear Mr. Rowland:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184332.

The Sherman Police Department (the "Department") received a request for "all information in the police department's file regarding [a specified accident] including, but not limited to, photographs, measurements, witnesses [sic] names, addresses and phone numbers as well as witness statements . . . [and] any toxicology reports for the parties involved." You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we note the submitted information contains a search warrant affidavit. An executed search warrant affidavit is made public by statute. *See* Code Crim. Proc. art. 18.01(b). In this instance, the submitted information indicates that a Department officer executed the search warrant associated with the submitted affidavit. Therefore, the Department must release the search warrant affidavit, in its entirety, under article 18.01(b) of the Code of Criminal Procedure. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Gov't Code ch. 552 generally do not apply to information that another statute expressly makes public).

Also, we note the submitted information contains an accident report form, ST-3, governed by chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident

report).¹ Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Transp. Code § 550.065(c)(4). This provision requires the Department of Public Safety or another governmental entity to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* The requestor has provided the Department with all three requisite pieces of information. Therefore, the Department must release the ST-3 accident report, in its entirety, to the requestor in accordance with section 550.065(c)(4) of the Transportation Code.

With respect to the remainder of the submitted information, we address your arguments under section 552.108 of the Government Code. Section 552.108(a)(1) 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). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You inform us that the submitted information pertains to a pending criminal investigation. Based on your representations and our review of the submitted information, we believe you have established that release of the information at issue “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 Publishing Company 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), which includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of the basic front page offense information, the Department may withhold the remaining submitted information from disclosure based on section 552.108 of the Government Code. The Department has the discretion to release all or part of the information that is not otherwise confidential by law. Gov’t Code § 552.007.

¹ We note the requestor indicates he possesses a copy of the “police accident report.” However, to the extent the requestor does not have a copy of the ST-3 report contained in the submitted information, we address the applicability of chapter 550 of the Transportation Code.

In summary, the Department must release the executed search warrant affidavit under article 18.01(b) of the Code of Criminal Procedure. The Department must release the ST-3 form in accordance with section 550.065(c)(4) of the Transportation Code. With the exception of basic front page offense information, the Department may withhold the remaining submitted information from disclosure under section 552.108 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 184332

Enc: Submitted documents

c: Mr. Gary L. Johnson
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(w/o enclosures)