



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2003

Mr. Ken Johnson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2003-5863

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188967.

The City of Waco (the "city") received four requests for information relating to the arrest of a specific individual. In response to these requests, you state that the city has released the following information: the probable cause affidavit against the individual; the arrest warrant for the individual; and the search warrant affidavits related to the individual. You claim, however, that with the exception of basic information, the remaining responsive information is excepted from disclosure under section 552.108 of the Government Code. *See* Gov't Code § 552.108(c) (providing that basic information may not be withheld under Gov't Code § 552.108); *see also 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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We have considered the exception you claim and have reviewed the information at issue.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

- (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 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[.]

A governmental body claiming an exception under 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(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the information at issue relates to the criminal investigation into the disappearance of a specific Baylor University basketball player. Based upon your representations that the requested information relates to a pending criminal investigation, we find that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the remaining information under section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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).

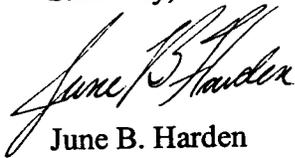
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 188967

Enc: Submitted documents

c: Ms. Angela Brown  
Fort Worth Star-Telegram  
P.O. Box 1870  
Fort Worth, Texas 76102  
(w/o enclosures)

Mr. Matthew Obernauer  
Austin American-Statesman  
305 South Congress Avenue  
Austin, Texas 78704  
(w/o enclosures)

Mr. Kyle Ringo  
Albuquerque Tribune  
P.O. Drawer T  
7777 Jefferson NE  
Albuquerque, New Mexico 87103  
(w/o enclosures)

Mr. Michael J. Brooks  
Cable News Network  
One CNN Center  
Atlanta, Georgia 30327  
(w/o enclosures)