



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2003

Ms. Kimberly Mickelson
Olson & Olson
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-7995

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190607.

The City of Seabrook (the "city"), which you represent, received a request for information related to a specified incident. You claim that the 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We note at the outset that this office received a complaint from the requestor indicating that she was not properly notified of the receipt of her request as required by section 552.301(d)(2) of the Government Code. Pursuant to section 552.302, a governmental body's failure to provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. However, it appears from the written communication this office received from the city that the requestor was copied. Therefore, we find that the city complied with section 552.301(d). Accordingly, we will address the city's claim under section 552.108 of the Government Code.

Next, we note that some of the submitted information was the subject of a prior ruling from this office, Open Records Letter No. 2003-6351 (2003). In regard to the information in report number 2003-287 that is responsive to the current request and is identical to the information previously requested and ruled upon by this office, we conclude that you must continue to rely on Open Records Letter No. 2003-6351 as a previous determination and withhold or release the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). For the information not previously ruled upon, we will address your claimed exception.¹

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. Based on the information you provided, we understand you to assert that the requested information pertains to a criminal investigation that concluded in a result other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the remaining submitted information.

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. Thus, with the exception of the basic front page offense and arrest information, the city may withhold the remaining requested information from disclosure based on section 552.108(a)(2). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law.² Gov't Code § 552.007.

¹With respect to Case Report number 2003-273, which we ruled must be withheld under section 552.101 of the Government Code in Open Records Letter No. 2003-6351, we note that the circumstances have changed as the requestor in this instance has a special right of access to the information contained within that report. Therefore, this ruling will address the availability of that report to this specific requestor.

²We note, however, that the submitted documents contain information that is confidential with respect to the general public. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the city receives another request for this information from someone other than this requestor or this requestor's authorized representative, the city must ask this office for a decision whether the information

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

is subject to public disclosure.

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 cursive script, appearing to read "Sarah Swanson".

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 190607

Enc. Submitted documents