



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2004

Mr. Adolph D. Jacobson  
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San Antonio, Texas 78249-2145

OR2004-4531

Dear Mr. Jacobson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 203287.

The City of Fair Oaks Ranch (the "city"), which you represent, received a request for all information regarding the arrest of a named individual, including photographs, videos, reports, correspondence, protocols, correspondence, and items of physical evidence. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that the Act is not implicated here because the requestor made his request for information under the Freedom of Information Act, which is a federal law that governs the release of information held by federal governmental bodies. *See* 5 U.S.C. § 552 (Freedom of Information Act). However, the Act is implicated whenever a requestor submits to a Texas governmental body a request for inspection or copies of public information. *See* Gov't Code § 552.003(6) (defining "requestor"), § 552.301(a) (after receiving "a written request for information," a governmental body must ask for a decision from the attorney general if it wishes to withhold that information). The Act only requires the request be made in writing. *See* Gov't Code § 552.301(c). Whether the requestor asserts a right to inspect public information under the Freedom of Information Act or other, similar laws does not affect the rights and duties of a governmental body to release or withhold public information under the Act. The requestor here made a written request to the city to inspect public

information; therefore, whether the city can withhold that information from release is determined by the Act.

We also note that tangible, physical items are not the type of information contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, the requested items of physical evidence do not constitute public information as that term is defined in section 552.002 of the Government Code. *See* Gov't Code § 552.002. Consequently, such evidence is not information that is made public by section 552.021 of the Government Code and need not be produced in response to a request made under the Act.

You contend that the submitted information may be withheld under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming 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(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the city's police department is currently conducting a criminal investigation and contend that release of the submitted information would interfere with this investigation. Based on this representation, we conclude you have established that section 552.108 applies to the submitted records that directly relate to the pending criminal investigation. *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).

We note that section 552.108 is inapplicable to 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 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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information directly related to the pending criminal investigation from disclosure under section 552.108(a)(1). We also note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

However, we note that one of the documents you seek to withhold pursuant to section 552.108(a)(1) is a student manual (“DWI Detection and Standardized Field Sobriety Testing”). You have not explained how release of this manual would interfere with the pending criminal investigation; therefore, the manual may not be withheld pursuant to section 552.108(a)(1). *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992,

writ denied). We have marked the records that the city may withhold under section 552.108(a)(1).<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).

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

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<sup>1</sup>We do not address your argument for exception under section 552.130 because the submitted information that is not excepted under section 552.108 does not contain information that is excepted under section 552.130.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 203287

Enc. Submitted documents

c: Mr. Wallace T. Ferguson  
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(w/o enclosures)