



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2004

Ms. Donna L. Clarke
Civil Division
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2004-6522

Dear Ms. Clarke:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206373.

The Lubbock County Sheriff's Department (the "sheriff") received a request for a copy of the emergency 911 audio tape related to a specified accident, as well as any supplemental reports, photographs, witness statements, videos, and any other information relating to the investigation of this case. You claim that the requested 911 audio tape and "additional documentation" are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted a sheriff's call sheet and the requested audio tape for our review. We therefore assume that to the extent any additional responsive information existed on the date the sheriff received this request, it has been released to the requestor. If not, the sheriff must release any such information at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now turn to your arguments for the submitted information. Section 552.108(a)(1) excepts from disclosure information 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. Gov't Code § 552.108(a)(1). You argue that section 552.108(a)(1) applies because the submitted information relates to an ongoing investigation being conducted by the Department of Public

Safety (the "DPS"), and that the release of the information would interfere with the investigation and possible prosecution of the case by the DPS. The DPS has informed us, however, that it does not object to the release of this information. Since you do not otherwise explain how the release of the submitted information would interfere with the detection, investigation, or prosecution of crime, we conclude that you have not established the applicability of section 552.108(a)(1). As you raise no further exceptions to disclosure, you must release the requested 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 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 black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/sdk

Ref: ID# 206373

Enc. Submitted documents

c: Mr. J.R. Castilleja
The Law Offices of Kevin Glasheen, L.L.P.
P.O. Box 1976
Lubbock, Texas 79408
(w/o enclosures)