



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2004

Mr. David Walker  
County Attorney  
Montgomery County  
207 West Phillips  
Conroe, Texas 77301

OR2004-7323

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208399.

The Montgomery County Sheriff's Department (the "sheriff") received a request for information related to a specified incident report. 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.

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 that information. *See* Gov't Code § 552.301(e)(1)(A); *see also 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 state that the submitted information relates to a pending criminal prosecution. You have also provided an affidavit from an Assistant District Attorney for Montgomery County who prosecuted the three defendants in this case. The assistant district attorney states that two of the defendants were found guilty, and that one of these defendants is currently appealing his

conviction before the 9<sup>th</sup> Court of Appeals. Finally, the assistant district attorney states that the release of any information in this case “would hamper the handling of this matter pending the Appellate Court’s decision.” Based on your representations, the representations of the assistant district attorney, and our review of the submitted information, we conclude that release of this information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1); *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); Open Records Decision No. 216 at 3 (1978).

We note, however, that 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*, 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 and arrest report information, the sheriff may withhold the submitted information based on section 552.108 of the Government Code. The sheriff has the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007. As our ruling is dispositive, we need not address your other claimed argument against disclosure.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 208399

Enc. Submitted documents

c: Ms. Vicki Lazrine  
P. O. Box 11344  
College Station, Texas 77842-1344  
(w/o enclosures)