



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2004

Mr. Nghiem V. Doan
Deputy City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2004-8753

Dear Mr. Doan:

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# 210956.

The City of Pearland Police Department (the "department") received two requests from the same requestor for 11 categories of information. You state that some of the information was released to the requestor in response to a previous request for information, but claim that the submitted information is excepted from disclosure under sections 552.103, 552.108 and 552.119 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section

¹ We assume that, to the extent any additional responsive information existed on the date of the department's receipt of this request, you have released it to the requestor. If not, then you must do so immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

² We note that only a portion of the information submitted as Exhibit E, which we have marked, is responsive to the request for police procedures pertaining to the arrest of persons with medical conditions. Therefore, this decision is not applicable to the remainder of Exhibit E, and the department need not release those records in response to this request.

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), .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). You advise that the submitted information relates to three pending prosecutions in criminal courts. Based on your representation and having reviewed the information at issue, we agree that release of the information submitted as Exhibits C, F, G and H would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). *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). However, 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 for the reports submitted as Exhibits F and G, you may withhold Exhibits C, F, G and H from disclosure based on section 552.108(a)(1).³ However, we find that the department has not shown how Exhibit D or the responsive information in Exhibit E relates to the pending prosecutions or how release of this information would interfere with law enforcement or crime prevention. Accordingly, Exhibit D and the responsive information in Exhibit E cannot be withheld under section 552.108(a)(1).

You also claim that Exhibit E is excepted from disclosure pursuant to section 552.108(b)(1), which excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution.” Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution).

You state that the information in Exhibit E contains “internal records and notations of a law enforcement agency . . . not commonly known and the release of the [information] would impair the Department's ability to maintain order [and] would place individuals at an advantage in confrontations with the Department.” Upon review, we find that the department has not shown how release of the responsive information in Exhibit E would interfere with

³ Because we reach this conclusion under section 552.108, we need not address your remaining arguments against the disclosure of Exhibit H.

law enforcement or crime prevention. *See* Gov't Code § 552.108(a)(1), (b)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face). We therefore determine that the marked information in Exhibit E may not be withheld under section 552.108(b)(1).

You further claim that Exhibit D and the responsive information in Exhibit E are excepted from disclosure under section 552.103, which provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

We note that the department is not a party to the criminal prosecutions at issue. Consequently, the department has no litigation interest with respect to the submitted information. *See* Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). In this type of situation we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the submitted information withheld from disclosure under section 552.103. We have not received an affirmative representation from a governmental body with a litigation interest, such as the entity prosecuting the criminal cases at issue, that such entity wants to withhold the information under section 552.103. Thus, we find you have failed to establish that section 552.103 is applicable. We therefore find that the department may not withhold any portion Exhibit D or the marked information in Exhibit E under section 552.103. As you claim no other exceptions for this information, it must be released to the requestor.

In summary, with the exception of the basic front page offense and arrest information for the reports submitted as Exhibits F and G, the department may withhold Exhibits C, F, G and H from disclosure based on section 552.108(a)(1). The department must release all remaining responsive information to the requestor.

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 "Marc Barenolat", with a long horizontal flourish extending to the right.

Marc A. Barenolat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 210956

Enc. Submitted documents

c: Mr. Edward Ross
8921 Hughes Ranch Road
Pearland, Texas 77584
(w/o enclosures)