



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 6, 2005

Ms. Deborah F. Harrison
Assistant District Attorney
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, TX 75069

OR2005-02937

Dear Ms. Harrison:

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# 221492.

The Collin County District Attorney's Office (the "D.A.") received a request for "any documents and/or complaints submitted and/or filed by [two named individuals] against the City of Princeton, Texas, its Police Chief, City Manager, Mayor and/or its agents and/or employees with the [D.A.'s] office between the years of 2000 and 2005." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information contains medical records, which you have marked. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Therefore, the medical records you have marked in Exhibits D and K may only be released in accordance with the MPA.

Exhibit K also contains an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report in Exhibit K under section 550.065(b).

Additionally, Exhibit D contains court-filed documents. Information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, this public court document must be released to the requestor, unless it is confidential under other law. Although you claim this information is excepted under sections 552.103 and 552.108, these sections are discretionary exceptions under the Act, and are therefore not "other law" that makes information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108). Therefore, the court-filed documents in Exhibit D must be released to the requestor pursuant to section 552.022(a)(17).

We now turn to your argument under section 552.108 of the Government Code for the remaining submitted information. This section 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 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).

You indicate that the case is not currently being investigated, although "this investigation could continue if new evidence is brought forth." You further state that "the information as

a whole deals with the detection, investigation or prosecution of crime the release of which would interfere with [the] detection, investigation or prosecution.” Thus, we understand you to represent that the remaining submitted information relates to a pending criminal investigation. Based upon your representations and our review of the information at issue, we conclude that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. *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). Therefore, we conclude that section 552.108(a)(1) is applicable.

However, section 552.108 does not except from disclosure 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*, including a detailed description of the offense. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, you must release the basic information about the traffic citations submitted in Exhibits A and B and the offense reports submitted in Exhibits B, C, D, and K. Although section 552.108 authorizes the department to withhold the remainder of the information at issue, it may choose to release all or part of this information that is not otherwise confidential by law. *See* Gov’t Code § 552.007.¹

In summary, the medical records you have marked in Exhibits D and K may only be released in accordance with the MPA. You must withhold the accident report in Exhibit K under section 550.065(b) of the Transportation Code. The court-filed documents in Exhibit D must be released to the requestor pursuant to section 552.022. After releasing the basic information about the traffic citations submitted in Exhibits A and B and the offense reports submitted in Exhibits B, C, D, and K, you may withhold the remaining submitted information under section 552.108(a)(1). Because our ruling on these issues is dispositive, we need not address your remaining arguments.

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

¹Generally, basic information held to be public in *Houston Chronicle* is not excepted from disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991). We, therefore, need not consider your argument under section 552.103.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#221492

Enc. Submitted documents

c: Mr. William W. Krueger, III
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(w/o enclosures)