



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2005

Mr. Lou Bright
General Counsel
Texas Alcohol Beverage Commission
P. O. Box 13127
Austin, Texas 78711-3127

OR2005-10507

Dear Mr. Bright:

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# 237339.

The Texas Alcohol Beverage Commission (the "TABC") received a request for information pertaining to the specified arrest of a named individual. You state that you have released some responsive information but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information submitted as Exhibit D contains copies of an order of commitment and an affidavit for warrant of arrest and detention that appear to have been filed with a court. Documents filed with a court are generally a matter of public record under section 552.022(a)(17) of the Government Code and may not be withheld from disclosure unless confidential under other law. *See Gov't Code § 552.022(a)(17); see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are public documents and must be released). You argue that these documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions and not "other law" that makes information "expressly confidential" for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision

No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the TABC must release these documents.

We next address your claim under section 552.108 of the Government Code with respect to the remaining information at issue. Section 552.108(a) 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), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided a letter from an assistant county attorney for the Travis County Attorney’s Office who states that the requested information relates to an active criminal investigation. Based upon this representation, we conclude that the release of this 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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the TABC may withhold the requested information from disclosure based on section 552.108(a)(1).¹

In summary, the order of commitment and affidavit for warrant of arrest and detention must be released in accordance with section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the remaining information at issue may be withheld pursuant to section 552.108(a)(1) of the Government Code.

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

¹As we reach this determination under section 552.108, we need not address your remaining arguments against disclosure except to note that (1) basic information described in *Houston Chronicle* does not include the Florida driver’s license you seek to withhold under section 552.101 of the Government Code and (2) basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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 ten 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, 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); *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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 237339

Enc. Submitted documents

c: Mr. Steve Bousquet
Deputy Bureau Chief
St. Petersburg Times
336 East College Avenue #105
Tallahassee, Florida 32301
(w/o enclosures)

Ms. Julie Joe
Assistant County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, Texas 78767
(w/o enclosures)