



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2006

Ms. Jeanette Kimball  
Department of Records  
Anderson County Sheriff's Office  
1200 E. Lacy  
Palestine, Texas 75801

OR2006-14149

Dear Ms. Kimball:

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# 265862.

The Anderson County Sheriff's Office (the "sheriff") received a request for information related to three incidents. You state that you have released to the requestor (1) a citizen's copy of case number 0606812,<sup>1</sup> (2) a call sheet for 0606880, (3) a call sheet 0606881, (4) warrant number 244.06, and (5) the arrest book-in 06-2457. You claim that the remaining portion of report number 0606812 is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

You claim that the remaining portion of report number 0606812 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in part:

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<sup>1</sup>We assume that the citizen's copy of case number 0606812 refers to the basic information that must be released under section 552.108(c). *See Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information).

(a) 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:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (a)(2). Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a final result other than a criminal conviction or deferred adjudication. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. We note that your brief cites the language of both subsections 552.108(a)(1) and 552.108(a)(2). In your brief you do not explain the status of the case. Thus, we are unable to determine from your brief which of the two cited subsections the sheriff is asserting. However, in your letter to the requestor you state that “case number 0606812 is still under investigation and awaiting disposition from the District Attorney’s Office.” Thus, it appears you are asserting that section 552.108(a)(1) is applicable to report number 0606812. Accordingly, based upon your representation that the case is pending and our review of the report, we conclude that the release of this report 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, you may withhold the report under 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

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, 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 10 calendar days of the date of this ruling.

Sincerely,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 265862

Enc. Submitted documents

c: Ms. Lillian Hollie  
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Palestine, Texas 75803  
(w/o enclosures)