



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2006

Lt. Oscar Garcia
Central Record Division
City of McAllen Police Department
P. O. Box 220
McAllen, Texas 78501

OR2006-00081

Dear Lt. Garcia:

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# 239451.

The City of McAllen Police Department (the "department") received a request for information regarding all incidents of prohibited weapons at a specified location for a specified period of time. You state that you have released some of the information to the requestor. You claim, however, that the remaining 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.

You claim that the remaining information is excepted from public disclosure under section 552.108 of the Government Code, which provides in pertinent part:

(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 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). 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), (a)(2), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that reports #05-98436, #0596963, #05-46484, and #99-36518 relate to pending prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to this information. 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). You also advise that reports #02-53930, #03-39467, #03-29357, #04-7929, and #04-8060 pertain to cases that concluded in a final result other than conviction or deferred adjudication. We therefore agree that section 552.108(a)(2) is applicable to these reports.

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, which you state you have released, you may withhold the requested information from disclosure based on section 552.108 of the Government Code.¹

We note that several of the submitted reports contain the arrestees' social security numbers. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the arrestees' social security numbers under section 552.147.³

In summary, with the exception of basic information that must be released, the department may withhold the remaining information in reports #05-98436, #0596963, #05-46484, and #99-36518 under section 552.108(a)(1) and reports #02-53930, #03-39467, #03-29357, # 04-7929, and #04-8060 under section 552.108(a)(2) of the Government Code. The arrestees' social security numbers must be withheld under section 552.147 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

¹Because this ruling is dispositive, we need not address your remaining argument.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 239451

Enc. Submitted documents

c: Ms.Cari Hammerstrom
The Monitor
1400 East Nolana
McAllen, Texas 78504
(w/o enclosures)