



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2006

Mr. Chad Morgan
Assistant County/District Attorney
Freestone County
118 East Commerce, Room 305
Fairfield, Texas 75840

OR2006-01505

Dear Mr. Morgan:

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# 242439.

The Freestone County Sheriff's Office (the "sheriff") received a request for a specified incident report and any supplemental report pertaining to the same incident. The sheriff received a second request from the same requestor for the following information:

- 1) A copy of the sheriff's documents and/or reports that indicate the formal or informal training taken by all of your officers.
- 2) Copies of the sheriff's documents and/or reports that indicate the following:
 - a) Number of annual misconduct complaints since the current Sheriff's tenure began.
 - b) Number of annual complaints regarding discrimination such as racial profiling, use of police dogs, and employment since the current Sheriff's tenure began.

c) Number of annual complaints for use of excessive force since the current Sheriff's tenure began.

d) Number of annual complaints for discourteous treatment since the current Sheriff's tenure began.

You state that the sheriff does not have information responsive to part 2 of the second request.¹ You also state that while the sheriff does not object to the release of information responsive to part 1 of the second request, you have sought clarification of this request. You claim that the information responsive to the first request is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note your assertion that the sheriff sought clarification of part 1 of the second request. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You state that the requestor has declined to clarify or narrow the scope of his request. Because the requestor has declined to narrow his request, and because the sheriff does not object to the release of information responsive to that part of the request, it must be released to requestor.

Next, we must address the sheriff's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the sheriff received these two requests on September 8, 2005 and September 12, 2005, respectively. However, the sheriff did not request a ruling or submit a copy or representative sample of the requested information for our review until December 6, 2005. Furthermore, on January 27, 2006, you submitted documents that were not submitted to our office with the sheriff's original request for a ruling. We have reviewed these documents and find that they are responsive to the current

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

request. Consequently, we find that the sheriff failed to comply with the procedural requirements of section 552.301.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, this section does not demonstrate a compelling reason to withhold the submitted information from the public, and it may not be withheld on that basis. Although section 552.108 of the Government Code is a discretionary exception as well, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See* Open Records Decision No. 586 at 3 (1991); *see also* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). You indicate that the Freestone County Attorney's Office (the "county attorney") has a law enforcement interest in the submitted information and objects to its release. Accordingly, we will address the applicability of section 552.108 of the Government Code to the submitted information.

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." Gov't Code § 552.108(a)(1). 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 id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 (1987), 372 (1983).

You state that the submitted information relates to a pending criminal prosecution being handled by the county attorney's office. However, in your original brief, you stated that the county attorney generally discloses "nearly all" information related to a criminal case to the defendant in question or the defendant's attorney. *See Brady v. Maryland*, 373 U.S. 83 (1963) (holding State has affirmative duty to disclose favorable and material evidence to

defense). On January 26, 2006, this office requested a representation from the county attorney's office indicating whether or not the submitted information had been released to this defendant's attorney, and if so, how the release of this information to the current requestor would interfere with the pending prosecution. *See* Gov't Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). In your response of January 27, 2006, you stated that while some of the submitted information was released to this defendant's attorney, such a release to a member of the public could taint prospective witnesses or the jury pool, especially in a small county such as Freestone County. Based upon this representation and our review, we find that the county attorney has demonstrated that the release of the submitted information would interfere with its pending prosecution. *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 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*. *See* 531 S.W.2d at 186-87. Thus, the sheriff must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). The remaining information may be withheld pursuant to section 552.108(a)(1).

In summary, the sheriff must release information responsive to part 1 of the second request. With the exception of basic information, the sheriff may withhold the submitted information under section 552.108 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 242439

Enc. Submitted documents

c: Mr. Dexter Talbert
P.O. Box 135
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(w/o enclosures)