



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Ms. Melanie Barton
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2006-01902

Dear Ms. Barton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 243371.

The Southwestern Institute of Forensic Sciences at Dallas ("SWIFS"), on whose behalf you submit arguments, received a request for a list of deceased Hurricane Katrina or Rita evacuees that have gone through the SWIFS office. You state that SWIFS has released a list of Katrina evacuees. You claim that the submitted 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.

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." 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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1937). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law

enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information. You state that the deaths of evacuees as a result of a bus explosion while escaping Hurricane Rita is currently under criminal investigation by the Dallas County Sheriff's Department, Harris County, and the Texas Department of Public Safety. You further state that the Dallas County Sheriff's Department "has filed 23 cases of Criminal Negligent Homicide concerning this bus incident with the Dallas County District Attorney's Office." Based upon these representations, we conclude that the release of the information concerning the Hurricane Rita evacuees who died as a result of a bus explosion 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). You may withhold the information that we have marked based on section 552.108(a)(1). However, SWIFS has not established that the remainder of the submitted information, concerning Hurricane Rita evacuees who did not die as a result of a bus explosion, is related to the pending investigations. Accordingly, it may not be withheld under section 552.108(a)(1). As you have raised no other exception for this information, it must be released.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/AEC/segh

Ref: ID# 243371

Enc. Submitted documents

c: Ms. Cynthia Leonor Garza
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(w/o enclosures)