



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2006

Ms. Paula J. Alexander  
General Counsel  
Metropolitan Transit Authority of Harris County  
P. O. Box 61429  
Houston, Texas 77208-1429

OR2006-03654

Dear Ms. Alexander:

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# 246139.

The Metropolitan Transit Authority of Harris County (the "authority") received a request for a specific incident report. You state that you will release most of the requested report to the requestor. You claim, however, that the remaining information in the report 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 of the Government Code provides in relevant 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[.]

Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you make the general assertion that the

witness information is excepted under section 552.108(a)(1). You have not provided, however, any arguments explaining how the release of the witness information would interfere with the detection, investigation, or prosecution of crime. Thus, we find that the authority has not demonstrated how release of the witness information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(a)(1); Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts, unless information does so on its face); *see also* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, the witness information may not be withheld under section 552.108 of the Government Code.

We note that the submitted incident report contains the home phone number of a police officer. Section 552.1175 of the Government Code provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). This section applies when an officer's personal information is not being held in an employment capacity. Here, the police officer's home phone number is contained in an incident report that is maintained by the authority in a law enforcement capacity, rather than in an employment capacity. Thus, if the officer whose home phone number is at issue notified the authority that he chooses to keep his home phone number confidential in accordance with section 552.1175(2), the authority must withhold this information, which we have marked, under section 552.1175 of the Government Code. As the authority does not raise any other exceptions against disclosure, the remaining information 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).

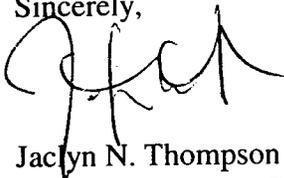
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Schless 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 246139

Enc. Submitted documents

c: Mr. Charles Y. Young  
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(w/o enclosures)