



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2006

Mr. Pete Garza
First Assistant District Attorney
49th Judicial District
P. O. Box 1343
Laredo, Texas 78042-1343

OR2006-04308

Dear Mr. Garza:

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# 247612.

The District Attorney for the 49th Judicial District (the "district attorney") received a request under the Act for the indictment of a named individual related to a shooting, the offense report and the police report on which the indictment are based, and the January 20, 2006 letter the sister of the shooting victim sent to the district attorney. In addition, the requestor asks the district attorney to respond to fifteen questions regarding the investigation and prosecution of the shooting. You indicate you have released the requested indictment but claim that the submitted information is excepted from disclosure under sections 552.108 and 552.109 of the Government Code. We have considered the exceptions you claim and reviewed the submitted report and letter.

Initially, we note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). In this instance, because the requestor asks the district attorney to answer factual questions or create new information, we conclude that the district attorney is not required by the Act to respond to the requestor's fifteen questions. *But see* Open Records Decision Nos. 561 at 8-9 (1990) (governmental body must make a good faith effort to relate a request to the information it holds). We now address your arguments with respect to the submitted information.

You claim the submitted offense report is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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), (a)(2), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted report relates to a pending criminal prosecution. Based upon your representation, we conclude that the release of the submitted report would interfere with the detection, investigation, or prosecution of crime. We therefore agree that section 552.108(a)(1) is applicable to the report at issue. 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 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*. See 531 S.W.2d at 185; see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic information, you may withhold the submitted report under section 552.108(a)(1).

You claim the submitted letter is excepted from disclosure under section 552.109 of the Government Code. Section 552.109 protects “[p]rivate correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” See Gov’t Code § 552.109. In determining whether information is excepted from disclosure by section 552.109, this office relies on the same common-law privacy test applicable under section 552.101 of the Government Code.¹ See Open Records Decision Nos. 506 (1988), 241 (1980), 212 (1978); see also Open Records Decision No. 40 (1974) (providing that statutory predecessor to section 552.109 may protect content of information, but not fact of communication). This office has also concluded that section 552.109 protects the privacy interest of the elected officials and not the interests of their correspondents. See Open Records Decision Nos. 473 at 3 (1987), 332 at 2 (1982).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931

¹Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses the doctrine of common-law privacy. Gov’t Code § 552.101.

(1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review of the submitted letter, we conclude that none of the information in the letter implicates the privacy rights of the district attorney, and thus, it may not be withheld under section 552.109.

In summary, with the exception of basic information, the submitted report may be withheld under section 552.108 of the Government Code. The remaining submitted 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 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 247612

Enc. Submitted documents

c: Ms. Maria Eugenia Guerra
Publisher
LareDOS
meg@laredosnews.com
(w/o enclosures)