



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2006

Mr. Jay A. Cantrell  
Attorney At Law  
1101 Scott Street, Suite 6  
Wichita Falls, Texas 76301-4660.

OR2006-10082

Dear Mr. Cantrell:

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# 258015.

The City of Burkburnett (the "city"), which you represent, received a request for several categories of information relating to an arrest of a named individual, including police policies, in-car video recordings, photographs, and other records. You inform us that the city has released some of the requested information. You claim that the remaining responsive information is excepted from disclosure under sections 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Initially, we must address the city's obligations under section 552.301 of the Government Code. 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 a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)(1)(D)*. You state that you wish to withhold the requested video recordings from disclosure. However, you did not submit to this office a copy of the responsive recordings, and the submitted offense and prosecution reports do not suffice as a representative sample of the requested recordings. As such, you failed to comply with the procedural requirements of section 552.301 with respect to the recordings.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). 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). Although your claims under sections 552.130 and 552.147 of the Government Code can provide compelling reasons for nondisclosure of information under section 552.302, we have no basis for concluding that the requested recordings are excepted under either of these sections because the city failed to submit any portion of them to us for our review. Therefore, we have no choice but to order the city to release the requested recordings at issue.

Next, we will address the submitted offense and prosecution reports. You inform us that the Wichita County Criminal District Attorney's Office (the "district attorney") asserts a law enforcement interest in the submitted information. Therefore, we will consider whether the city may withhold the submitted information on behalf of the district attorney under section 552.108.

Section 552.108(a)(1) excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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 claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information relates to a pending criminal investigation and prosecution by the district attorney. You state that the district attorney objects to release of the information and believes that its release at this time would interfere with the investigation of the case. Based on your representations, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of

information deemed public by *Houston Chronicle*). The city may withhold the rest of the submitted information on behalf of the district attorney under section 552.108(a)(1) of the Government Code.

In summary, the city must release the responsive recordings that it failed to submit to this office for review and, except for the basic information that must be released under section 552.108(c), the city may withhold the submitted information on behalf of the district attorney under section 552.108(a)(1) of the Government Code. If the city believes that the responsive recordings are confidential, private, or proprietary and may not lawfully be released, the city must challenge this ruling in court as outlined below.

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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/dh

Ref: ID# 258015

Enc: Submitted documents

c: Mr. Matthew D. Anderson  
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(w/o enclosures)