



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2006

Mr. David E. Cherry
City Attorney for the City of Robinson
Campbell, Cherry, Harrison, Davis, Dove, P.C.
P. O. Drawer 21387
Waco, Texas 76702-1387

OR2006-12495

Dear Mr. Cherry:

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# 262701.

The Robinson Police Department (the "department"), which you represent, received a request for 1) any "use of force" reports since January 1, 2000; 2) any reports since January 1, 2000 where officers came into contact with any person on whom a weapon was used; 3) custodial death reports involving a person on whom a weapon was used since January 1, 2000; 4) any reports of training injuries sustained by officers involving weapons; and 5) any policies regarding the department's use of force. You inform us that the requestor modified her request, in part, to request only case files reflecting the actual use of a taser. You state that you have released some of the requested information, but claim that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, 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* Gov't Code § 552.301(a), (b). Pursuant to section 52.301(e) of the Government Code, a governmental body must, within fifteen business days after receiving the request, submit the requested information along with written comments explaining why the stated exceptions apply. *See id.* § 52.301(e). The request bears a stamp indicating that it was received on June 16, 2006. However, you did not request a decision from this office or submit the information required by section 552.301(e) until August 16, 2006, nor did you provide us with sufficient information to determine whether the deadlines mandated by section 552.301 were tolled. *See id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request for information); *see also*

Open Records Decision No. 663 at 5 (1999) (providing that time periods described by section 552.301 are tolled during the clarification process). Consequently, you failed to meet the statutory deadlines mandated by section 552.301(c) of the Government Code.

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 a compelling reason exists for withholding 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 990, 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). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under law. Open Records Decision No. 150 (1977). Although you assert that portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code, this exception is a discretionary exception to disclosure and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department waived its claim under section 552.108. Therefore, police report 05-1127 may not be withheld under section 552.108. However, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information. Open Records Decision No. 586 (1991). Because you inform us that the McLennan County District Attorney (the "district attorney") objects to the release of police report 05-0846, we will consider the district attorney's claim regarding section 552.108 for that report.

Section 552.108 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). The district attorney states that police report 05-0846 should be excepted from disclosure as it relates to pending criminal prosecution. Based upon the district attorney's representations, we conclude that release of police report 05-0846 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).

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* and includes a detailed description

of the offense. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold police report 05-0846 under section 552.108(a)(1).

We note that police report 05-1127 contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The department must withhold the Texas driver's license number we have marked under section 552.130.

We also note that police report 05-1127 contains a social security number. Section 52.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ The department must withhold the social security number we have marked under section 552.147.

In summary, with the exception of basic information, you may withhold police report 05-0846 under section 552.108(a)(1). The department must withhold the Texas driver's license number we have marked under section 552.130 and the social security number we have marked under section 552.147 from police report 05-1127. 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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



José Vela III
Assistant Attorney General
Open Records Division

JV/eb

Ref: ID# 262701

Enc. Submitted documents

c: Mr. Rickie Adams
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(w/o enclosures)