



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2006

Mr. Denis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-13058

Dear Mr. McElroy:

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# 263670.

The City of Fort Worth (the "city") received a request for 18 specified police reports. You indicate that some of the requested information is the subject of prior open records letter rulings. You have submitted information that the city seeks to withhold under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We note that you have not submitted report number 060056699. Therefore, unless the city has already released that information, you must do so at this time.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

You inform us that some of the responsive information is the subject of other requests for open records rulings, in response to which this office issued Open Records Letter Nos. 2006-12998 (2006) and 2006-13000 (2006). You do not indicate that there has been any change in the law, facts, and circumstances on which the previous rulings were based. Therefore,

¹ We note that the Act does not require the city to release information that did not exist when it received this request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

the city may continue to rely on Open Records Letter Nos. 2006-12998 and 2006-13000 with respect to the responsive information that is the subject of the previous rulings. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Section 552.108 of the Government Code 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[.]” Govt. 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 Prat*, 551 S.W.2d 706 (Tex. 1977).

You inform us that report numbers 06-29538, 06-35040, and 06-29569 are related to pending police investigations. You contend, and have submitted affidavits stating, that the release of those reports would interfere with the corresponding investigations. You also inform us that report numbers 06-27656, 06-27747, 06-32942, 06-36199, 06-36406, 06-40087, 06-35730, and 06-35731 are related to a pending prosecution. You contend, and have submitted affidavits indicating, that the release of those reports would interfere with the prosecution. Based on your arguments and the submitted affidavits, we conclude that section 552.108(a)(1) is applicable to report numbers 06-29538, 06-35040, 06-29569, 06-27656, 06-27747, 06-32942, 06-36199, 06-36406, 06-40087, 06-35730, and 06-35731. *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).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Govt. 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 with respect to each listed report, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of the 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 information in report numbers 06-29538, 06-35040, 06-9569, 06-27656, 06-27747, 06-32942, 06-36199, 06-36406, 06-40087, 06-35730, and 06-35731 under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Govt. Code § 552.130. We agree that the Texas motor vehicle information that you have marked must be withheld from disclosure under section 552.130. We have marked other information that must also be withheld under this exception.

In summary: (1) the city may continue to rely on Open Records Letter Nos. 2006-12998 and 2006-13000 with respect to the responsive information that is the subject of the previous rulings; (2) except for the basic information that must be released under section 552.108(c), the city may withhold report numbers 06-29538, 06-35040, 06-29569, 06-27656, 06-27747, 06-32942, 06-36199, 06-36406, 06-40087, 06-35730, and 06-35731 under section 552.108(a)(1) of the Government Code; and (3) the city must withhold the Texas motor vehicle information that you have marked, as well as the information that we have marked, under section 552.130 of the Government Code. The rest of the 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. Govt. 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).

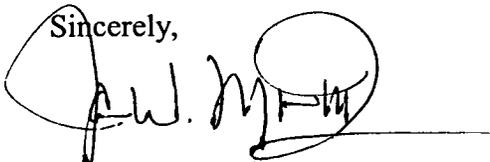
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 263670
Tracking #4700-06

Enc: Submitted documents

c: Mr. Robert L. Snoke
3826 6th Avenue
Fort Worth, Texas 76110-5002
(w/o enclosures)