



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2007

Ms. Leslie Spear Pearce
City Attorney
City of Plainview
901 Broadway
Plainview, Texas 79072

OR2007-00362

Dear Ms. Pearce:

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# 269072.

The Plainview Police Department (the "department") received two requests from the same requestor for information regarding two specified arrests. You state that the department will release a portion of the information responsive to the requests, but you claim that the remaining requested information is excepted from disclosure based on section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See*

¹Although you raise sections 552.101, 552.103, 552.107, 552.111 and 552.130 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Thus, the department has waived its claim under sections 552.103, 552.107, and 552.111. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 (2000) (discretionary exceptions in general). Further, the department has not demonstrated that any of the submitted information is confidential for purposes of sections 552.101 and 552.130. *See* Gov't Code §§ 552.301, .302.

²While the department also raises sections 552.301, 552.305, and 552.307, we note that these sections are not exceptions to disclosure. Rather, section 552.301 sets out the duties of a governmental body to seek the attorney general's decision on whether information is excepted from disclosure to the public. *See* Gov't Code § 552.301. Section 552.305 permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor). And section 552.307 explains the requirement of seeking an attorney general decision when a governmental body determines that information may be subject to a special right of access under section 552.023. *See* Gov't Code § 552.307.

Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

First, upon our review, we note that some of the audio and video recordings include information that is not responsive to these two information requests. The submitted requests ask for information pertaining to two specified individuals. Portions of the recordings are unrelated to the individuals in question. Accordingly, we find that these portions of information are not responsive to the present requests. Since we find that these portions of the submitted audio and video recordings are not responsive, we do not address their public availability in this ruling and such non-responsive information need not be released.

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 . . . 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 that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the information at issue relates to criminal cases that “are currently pending and being prosecuted with an ongoing investigation into the charges.” You argue that release of the responsive information at issue would interfere with the investigation and prosecution of crime. Based on these representations and our review of the submitted information, we conclude that the release of the information at issue 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, as you acknowledge, 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. 531 S.W.2d 177; *see* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which you state you have released, the department may withhold the information at issue from disclosure under section 552.108(a)(1).

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,



Gilbert N. Saenz
Assistant Attorney General
Open Records Division

GNS/sdk

Ref: ID# 269072

Enc. Submitted documents

c: Mr. Eric Willard
Attorney at Law
701 Broadway Street, Suite 317
Plainview, Texas 79072
(w/o enclosures)