



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2007

Ms. Angela M. DeLuca  
Assistant City Attorney  
Legal Department  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2007-05023

Dear Ms. DeLuca:

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#277295.

The College Station Police Department (the "department") received a request for information pertaining to five specified incident reports. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that the submitted information does not include information pertaining to reports 05-002525, 05-002527, and 05-001897. We therefore assume that the department has released any information that is responsive to that aspect of the request, to the extent that such information existed when the department received the request. If not, then the department must release any such information at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address the requestor's contention that the department previously released the requested information to the Bryan-College Station Eagle, a local newspaper. We note that section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007(b). As a general rule, if a governmental body releases information to one member

of the public, the Act's exceptions to disclosure are waived unless the information is deemed confidential under the Act. Open Records Decision Nos. 490 (1988), 400 (1983). Although protection for information covered by the Act's permissive exceptions, such as section 552.108, can be waived, protection for information deemed confidential by law ordinarily is not waived through "selective disclosure." See Open Records Decision Nos. 490, 400. If it is established that the department previously released any of the submitted information to a member or members of the public, the department cannot now withhold such information under section 552.108. However, if the department previously released confidential information, such information remains confidential and must not be released pursuant to section 552.007. To the extent the submitted information has not been presented to the public, we address the department's arguments for the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You assert that the submitted information pertains to criminal cases that did not result in conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this information.

However, section 552.108 of the Government Code 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 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). Thus, with the exception of basic front page offense and arrest information, the department may withhold the submitted information based on section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. *Id.* § 552.007.

In summary, to the extent the submitted information has not been presented to the public, the department may withhold the submitted information under section 552.108 of the Government Code. Basic information must be released to the requestor.

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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 277295

Enc. Submitted documents

c: Dr. Michael Heffernan, PhD  
Licensed Private Investigator  
P.O. Box 2321  
Fulton, Texas 78358  
(w/o enclosures)