



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-11404

Dear Mr. Gambrell:

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# 288146.

The Houston Police Department (the "department") received a request for all information pertaining to a specified incident, as well as information pertaining to the department's routine investigative procedures for homicide. You state that some information, including news releases and an autopsy report, will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that some of the information contained in Exhibit 6 is not responsive to the instant request for information. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

We next note that the information submitted by the department includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that the attorney general shall make the custodial death report available to any interested person, with the exception of any portion of the report that the attorney general determines is privileged. *See* Code Crim. Proc. art. 49.18(b). In 2003, the Office of the Attorney General revised the format of

a custodial death report. The attorney general has determined that the two-page report and summary must be released to the public; however, any other documents submitted with the revised report are confidential under article 49.18 of the Code of Criminal Procedure. *See also* Open Records Decision No. 623 at 3 (1994) (exceptions to public disclosure under Act generally not applicable to information that another statute expressly makes public). In this instance, you have submitted a revised custodial death report. Accordingly, the submitted two-page custodial death report and summary must be released under article 49.18 of the Code of Criminal Procedure.

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 state that the information in Exhibits 2, 3, 4, 5, 7, 8, 9, and 10 relates to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representations, we find that section 552.108(a)(2) is applicable to this information.¹

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 at 185 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Accordingly, with the exception of the basic front page offense report information, you may withhold Exhibits 2, 3, 4, 5, 7, 8, 9, and 10 under section 552.108(a)(2).

Section 552.108(b)(1) of the Government Code provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) protects information the public disclosure of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens

¹As our ruling for this information is dispositive, we do not address your remaining arguments.

to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body could withhold information that would reveal law enforcement techniques or procedures. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under predecessor to section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (predecessor to section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

To claim section 552.108(b)(1), a governmental body must explain how and why release of the requested information would interfere with law enforcement and crime prevention. Gov't Code §§ 552.108(b)(1), .301; Open Records Decision No. 562 at 10 (1990). Generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under predecessor to section 552.108), 252 at 3 (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

In this instance, you state that Exhibit 6 contains specific guidelines for department officers to follow when handling situations regarding homicide investigations and that this information was prepared for the sole purpose of providing department officers with tactical assistance. You additionally provide an affidavit from a department officer which repeatedly asserts that the release of the various documents in Exhibit 6 would enable a perpetrator to alter his actions in ways which would make investigation of homicides more difficult. Based on the representations in the affidavit, and our review of the documents at issue, we agree that the release of the information which we have marked would interfere with law enforcement. However, as to the remaining information in Exhibit 6, we conclude that the department has not demonstrated how the release of this information constitutes investigative procedures and techniques that are not commonly known. *See* ORD 252 at 3. Accordingly, no part of the remaining information may be withheld pursuant to section 552.108(b)(1).

In summary, the department must release the submitted Custodial Death Report and summary. With the exception of basic information, the department may withhold Exhibits 2, 3, 4, 5, 7, 8, 9, and 10 pursuant to section 552.108(a)(2) of the Government Code.

The department may withhold the information we have marked under section 552.108(b)(1). 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 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 that reads "Kara A. Batey". The signature is written in a cursive style with a large, looping 'y' at the end.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 288146

Enc. Submitted documents

c: Mr. Derek S. Merman
723 Main, Suite 1020
Houston, Texas 77002
(w/o enclosures)