



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 5, 2007

Ms. Teresa Special  
Assistant City Attorney  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

OR2007-11535

Dear Ms. Special:

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# 288924.

The San Angelo Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code, which provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1). In this instance, the submitted information is a completed report made by and for the department. This information must be released under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. The department seeks to withhold the submitted information under section 552.103. We note, however, that this section is a discretionary exception to public disclosure that protects the governmental body's

interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived). As such, section 552.103 does not qualify as other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold any portion of the submitted information under section 552.103. However, you also raise section 552.108; therefore, we will consider your argument under this section.

Section 552.108(a)(1) of the Government Code exempts from required 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.” Gov’t Code § 552.108(a)(1). Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information *presumptively* 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).

You state that the requested offense report of a June 13, 2007 assault relates to an ongoing investigation conducted by the department. However, the submitted information reflects that the listed suspect is deceased. Because no criminal charges are possible in this case, the department failed to demonstrate how release of the information interferes with the investigation of the case. You have also provided this office with a letter from a Texas Ranger stating that he is investigating the death of the suspect in the submitted incident report. The letter requests that the details of the investigation pertaining to the death of the suspect, which occurred on June 18, 2007, not be released because it would interfere with the investigation. The Texas Ranger’s letter does not request that the details of the submitted incident report be withheld. Neither the Ranger’s letter nor the department explains how the submitted assault report relates to the Ranger’s investigation of the subsequent death of the suspect involving a taser. Thus, we find that you have not established that section 552.108(a)(1) applies to the requested information, and it may not be withheld on that basis. As you raise no other arguments against disclosure, the submitted incident report must be released to the requestor.<sup>1</sup>

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

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<sup>1</sup>We note that the submitted information contains a social security number. 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.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 288924

Enc. Submitted documents

c: Ms. Maribel Salazar  
34 West Harris Avenue  
San Angelo, Texas 76903  
(w/o enclosures)