



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2007

Mr. Michael W. Dixon  
Haley & Olson  
510 North Valley Mills Drive, Suite 600  
Waco, Texas 76710

OR2007-12746

Dear Mr. Dixon:

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# 290488.

The Bellmead Police Department (the "department"), which you represent, received a request for information pertaining to a named police officer and a specified citation. You claim that the requested 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 you have redacted information in the submitted documents. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(2); Open Records Decision 673 (2000). Therefore, the department has failed to comply with section 552.301(e) in regards to the redacted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party

interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

We are not able to discern the nature of the information you have redacted. Thus, because we are not able to review this redacted information, we have no means of determining whether it is excepted from release pursuant to the Act. We therefore have no choice but to order the redacted information be released pursuant to section 552.302. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to 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), 452 at 3 (1986), 362 at 2 (1983). In this instance, a portion of the submitted information was created after the date of the department's receipt of this request for information and thus is not responsive to this request. This decision does not address the public availability of the non-responsive information, and that information need not be released. We have marked this information accordingly.

We next address your claim under section 552.108 for the remaining non-redacted responsive information. Section 552.108 provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(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 the requirements of Section 552.021 if:

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

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that the submitted information includes two copies of the specified citation. Because a copy of the citation has been provided to the requestor, we find that release of the copies of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold the copies of the specified citation under section 552.108(a)(1), but instead must release these documents, which we have marked. You state that the remaining information relates to a case pending with the municipal court and that release of the information would interfere with the prosecution of the case. Based upon this representation, 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). Therefore, section 552.108(a)(1) is applicable to the remaining non-redacted responsive information.

However, 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 Publishing 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), and includes a detailed description of the offense. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.<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 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.103 of the Government Code, except to note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision No. 597 (1991).

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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 290488

Enc. Submitted documents

c: Mr. Sean R. Stone  
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(w/o enclosures)