



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2007

Ms. Renee Smith Byas
Vice Chancellor & General Counsel
North Harris Montgomery Community College District
5000 Research Forest Drive
The Woodlands, Texas 77381-4399

OR2007-13978

Dear Ms. Byas:

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# 292888.

The North Harris Montgomery Community College District (the "district") received a request for information pertaining to a specified incident. You state that you have released basic information, with redactions agreed to by the requestor.¹ You further state that the district does not have information responsive to a portion of the request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. — San Antonio 1978, writ dismissed). You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal prosecution. Based upon this

¹You indicate that the district sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

representation and our review, we conclude that the release of the submitted information would interfere with the detection, investigation or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th District] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the arresting officer. *See* 531 S.W.2d at 187; Open Records Decision No. 127 (summarizing types of information considered to be basic information).

You claim, however, that the arresting officer's identity is excepted from disclosure under section 552.132(d) of the Government Code. Section 552.132(d) permits an employee of a governmental body who is also a victim, as defined by subchapter B of chapter 56 of the Code of Criminal Procedure, to elect whether to allow public access to information held by the Office of the Attorney General or another governmental body that would identify or tend to identify the victim. Act of May 27, 1999, 76th Leg., R.S., ch. 1319, 199 Tex. Gen. Laws 4500, 4503-04, *amended by* Act of May 17, 2007, 80th Leg., R.S., ch. 290, § 1, 2007 Tex. Sess. Law Serv. 564-65. Under section 552.132(e) of the Government Code, if the employee fails to make such an election, the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. Gov't Code § 552.132(e). You argue that any information identifying or tending to identify the peace officer employed by the district who was allegedly assaulted while performing her duties is excepted under section 552.132(d). Section 56.32(a)(11) defines, in part, a victim as an individual who "suffers personal injury or death as a result of criminally injurious conduct[.]" Crim. Proc. Code art. 56.32(a)(11). In this instance, we find that you have not established that the conduct at issue falls within the definition of criminally injurious conduct. *See id.* art. 56.32(a)(4)(D). Accordingly, none of the basic information may be withheld under section 552.132(d) of the Government Code.

In summary, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure, 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).

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 292888

Enc. Submitted documents

c: Mr. Charles H. Portz
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(w/o enclosures)