



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2007

Ms. Molly Shortall
Assistant City Attorney
P. O. Box 90231
Arlington, Texas 76004

OR2007-15622

Dear Ms. Shortall:

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 #295683.

The Arlington Police Department (the "department") received a request for specified radio communications between a named police officer and police dispatch, as well as information regarding any disciplinary actions or commendations concerning the same named officer. You claim that the requested 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.

Initially, we note that the submitted documents include an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the required information. Accordingly, the department must withhold the accident report form, which we have marked, pursuant to section 550.065(b) of the Transportation Code.

You claim that the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by

a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state that the submitted radio communications relate to a pending criminal investigation by the department. Based on this representation, we conclude that release of the submitted audio recordings of the radio communications would interfere with the detection, investigation, or prosecution of a crime. Accordingly, the audio recordings may be withheld under section 552.108(a)(1). *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). You argue that the submitted disciplinary complaints should also be excepted under section 552.108(a)(1) because they “may also be at issue if the case is presented to a grand jury and prosecuted.” These personnel records do not pertain to the current police department investigation. Furthermore, you have not adequately explained how the release of these records would interfere with a criminal investigation or prosecution. Therefore, we find that you have failed to demonstrate how their release would interfere with the detection, investigation, or prosecution of crime, and they may not be withheld under section 552.108(a)(1).

We note that section 552.117 of the Government Code is applicable to a portion of the remaining information. Section 552.117(a)(2) excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ Accordingly, the department must withhold the social security numbers we have marked under section 552.117(a)(2) of the Government Code.

In summary, the department may withhold the submitted audio recordings under section 552.108(a)(1) of the Government Code. The department must withhold the accident report form we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, as well as the social security numbers we have marked under section 552.117(a)(2). 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

¹Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 295683

Enc. Submitted documents

c: Ms. Traci L. Shurley
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(w/o enclosures)