



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard
Dallas, Texas 75201

OR2008-05874

Dear Mr. Dodd:

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# 309751.

The Kaufman Police Department (the "department"), which you represent, received a request for audio recordings of radio transmissions for two named officers from 2115 hours until 2300 hours on October 9, 2007; all logs related to the named officers for the same specified date and time; all video and audio recordings made by the named officers related to the arrest of a named individual; any offense report related to the specified arrest; the training records and personnel files of the named officers; and the maintenance records for the vehicles operated by the named officers from September 9, 2007 until November 9, 2007. 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 includes a magistrate warning that has been signed by a magistrate. Information filed with a court is generally a matter of public records and may not be withheld from disclosure. *See* Gov't Code § 552.022(a)(17); *see also Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise sections 552.103 and 552.108 of the Government Code for this information, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" that make court records confidential for the purposes of section 552.022. *See*

Open Records Decision Nos. 177 (1977) (governmental body may waive statutory predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general). Thus, the magistrate warning we have marked may not be withheld under sections 552.103 or 552.108. As you raise no further exceptions against the disclosure of this information, it must be released.

Section 552.108 of the Government Code provides in relevant part:

(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;

Gov't Code § 552.108(a)(1). A governmental body claiming subsection 552.108(a)(1) 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 information at issue relates to a criminal prosecution that the department "intends to file or has already filed with the District Attorney's Office." Based upon this representation and our review, we conclude that the release of the remaining information 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 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*. Thus, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1).¹

In summary, (1) the magistrate warning we have marked is subject to section 552.022 (a)(17) of the Government Code and must be released; and (2) with the exception of basic

¹As 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).

information, the department may withhold the remaining 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 governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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

²We 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. The requestor may be the attorney for the individual, and therefore, may have a right to the individual's social security number. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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# 309751

Enc. Submitted documents

c: Mr. R.C. Bunger
Attorney at Law
P.O. Box 670959
Dallas, Texas 75367
(w/o enclosures)