



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Mr. R. Kinley Hegglund, Jr.
Senior Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2008-05883

Dear Mr. Hegglund:

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# 308956.

The Wichita Falls Police Department (the "department") received a request for all reports involving two named individuals on two specified dates. You state that some responsive information has been released to the requestor. 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 report number 07-020332 falls outside of the dates specified by the requestor, and is thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked, in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we must address the department's obligations under section 552.301 of the Government Code. Section 552.301 provides that a governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). While you raised section 552.108 within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.103 within the ten-business-day deadline. Section 552.103 is a discretionary exception that protects a governmental body's interests and may be waived by a governmental body's failure to comply with the procedural requirements of the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas, no pet.) (governmental body may waive

section 552.103). Thus, because you have failed to comply with the procedural requirements of section 552.301, the department has waived its claim under section 552.103. Therefore, the department may not withhold any of the submitted information under section 552.103 of the Government Code.

Section 552.108(a) 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 assert that offense report number 07-020861 is an open, pending criminal investigation. You inform us and provide an affidavit from the Wichita County District Attorney’s Office asserting that offense report number 07-020867 relates to a pending criminal prosecution. Based upon your representations and our review, we conclude that release of these offense reports 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page information, which you state has been released, the department may withhold the remaining information under section 552.108(a)(1).

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

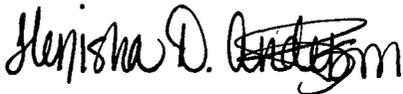
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 308956

Enc. Submitted documents

c: Ms. Beth Bailey
Senior Investigator
Office of the Public Defender
900 7th Street, Suite 405
Wichita Falls, Texas 76301-2400
(w/o enclosures)