



June 9, 1999

Mr. Brendan Hall
City Attorney
City of Harlingen
P.O. Box 2725
Harlingen Texas 78550

OR99-1615

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125138.

The Harlingen Police Department (the “department”) received an open records request for three categories of information, discussed *infra*, that you seek to withhold pursuant to sections 552.103 and 552.108 of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation *to which the governmental body is a party*. Open Records Decision No. 588 at 1 (1991).

You contend that the requested information relates to pending criminal litigation in Cameron County. The department, therefore, is not a party to the litigation. However, in order to protect the litigation interests of the prosecuting attorney, and consistent with a previously established practice of this office, we asked you in a letter dated May 17, 1999, to submit to this office a letter from the prosecutor stating that the requested records relate to pending prosecution and that the records should be withheld in order to protect his litigation interests. We requested that you provide this information to our office within seven days from the date of receiving the notice in accordance with section 552.303 of the Government Code. The notice further stated that under section 552.303(e) of the Government Code, failure to comply would result in this office’s refusal to consider your section 552.103 claim. Because we have received no such letter from the prosecuting attorney, we assume that the prosecutor has no litigation interest in having these records withheld from the public. The department may not withhold any of the records at issue pursuant to section 552.103.

You next contend that the department may withhold the requested information pursuant to section 552.108 of the Government Code. Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure

(a) Information 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;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(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 . . . if:

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

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

The requestor seeks the following categories of information:

1. Any and all police reports and/or offense reports prepared by Office J. Villarreal No. 2048, relating to all his investigations, whether they result in an arrest or not, of the offense of driving while intoxicated and which were prepared during the months of April, May and June of 1998.
2. Any and all policy manuals, training manuals, training curriculum, memoranda, pamphlets, brochures and guideline manuals established and used by your officers, within your department, to administer the following field sobriety tests: 1) HGN, 2) Walk and Turn and 30 [sic] One Leg Stand.
3. Any and all policy manuals, training manuals, training curriculum, memoranda, pamphlets, brochures and guideline manuals established and used by your officers, within your department, to administer the Breathalyzer Tests using the Intoxilyzer 5000 Unit.

You contend that the department may withhold the requested information pursuant to section 552.108 because the requestor

advised the Department representative that he wanted these documents for a trial scheduled some time in April 1999. Apparently the Cameron County District Attorney's Office is prosecuting a client or clients of [the requestor] for a DWI charge or charges.

Based on the above argument, we conclude that you have not met your burden of establishing the applicability of section 552.108 to the records at issue. You have not raised any particular subsection of section 552.108 with regard to any of the requested materials. Nor have you argued that the release of any of the records at issue, including the DWI training materials, would interfere with the department's functioning as a law enforcement agency. We further note that you have not established that these reports pertain either to pending criminal investigations or prosecutions or to investigations or prosecutions of crime that did not result in a conviction or deferred adjudication. You do not contend that records pertaining to the requestor's client are among those offense and incident reports at issue here, and in fact, it appears that you are unaware of the identity of the requestor's client and consequently are unable to establish that the requestor's client was ever arrested or investigated for DWI by any one of the department's police officers. The department may not withhold any of the requested records pursuant to section 552.108.

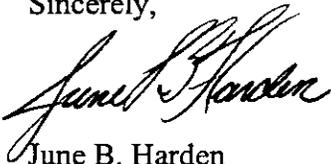
The department must release the requested information in its entirety, with the following exceptions. Section 552.130(a) of the Government Code requires the department to withhold

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

To the extent that these types of information are contained in the requested offense and incident reports, this information must be withheld pursuant to section 552.130(a). As stated above, all remaining requested information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/eaf

Ref.: ID# 125138

Encl: Submitted documents

cc: Mr. Charles E. Mattingly, Jr.
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845 East Harrison Street, Suite A
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(w/o enclosures)