



December 22, 1999

Lieutenant Brad Lancaster
Amarillo Police Department
200 East 3rd
Amarillo, Texas 79101-1514

OR99-3728

Dear Lt. Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130668.

The Amarillo Police Department (the "department") received a request for all police reports pertaining to domestic violence and harassment between certain individuals. You state that the following offense reports are responsive to the request: #99-53035, #99-73209, #99-80372, and #99-80641. We note that you did not submit to this office for review a copy of report # 99-53035, nor did you argue that this report is excepted from required public disclosure. *See* Gov't Code § 552.301(e)(1)(A), (D). Consequently, that report is presumed to be public and must now be released if the department has not already done so. *See* Gov't Code § 552.302.

You contend that reports #99-73209 and #99-80641 are excepted from required public disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a) excepts from public 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;
- (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]

You seek to withhold reports #99-73209 and #99-80641 because “the cases have not been adjudicated, and therefore have not resulted in a conviction or deterred adjudication against any person.” This explanation does not meet your burden of establishing the applicability of section 552.108 in that it neither establishes that these cases are pending for purposes of section 552.108(a)(1) nor that the cases have come to a conclusion and did not result in a conviction or deferred adjudication for purposes of section 552.108(a)(2). Because this office has insufficient information to reach any conclusion regarding pendency of an investigation or prosecution regarding report #99-73209, no portion of that report may be withheld pursuant to section 552.108. However, after reviewing report #99-80641, it is apparent from the face of this document that the investigation of that matter has concluded and that no prosecution will result therefrom. We conclude, therefore, that the department may withhold most of the information contained in report #99-80641 pursuant to section 552.108(a)(2).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department must release these types of information contained in report #99-80641 in accordance with *Houston Chronicle Publishing Company 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).

You also contend that offense reports #99-73209, #99-80372, and #99-80641 are protected from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. As noted above, the records at issue concern reports of family violence. In Open Records Decision No. 611 (1992), this office concluded that common law privacy does not, as a matter of law, except all police records regarding violence among family members and that such determinations must be made on a case-by-case basis. In this instance, however, we need not reach such a determination because, assuming *arguendo* that some of the information at issue is protected by common-law privacy, the requestor would have a special right of access to that information pursuant to section 552.023 of the Government Code. Consequently, the department may not withhold any of the requested information on privacy grounds, and reports #99-73209 and #99-80372 must be released in their entirety.

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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/RWP/jc

Ref: ID# 130668

Encl. Submitted documents

cc: Ms. Geneva Duncan
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Amarillo, Texas 79110
(w/o enclosures)