



February 22, 2000

Lieutenant Arturo Valdez
Central Record Division
City of McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR2000-0640

Dear Lieutenant Valdez:

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# 132408.

The McAllen Police Department (the "department") received a request for complete information relating to four case numbers. You have submitted copies of four responsive offense reports. You claim that the requested information is excepted from public disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108, the "law enforcement exception," provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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.

(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 is excepted from [required public disclosure] 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.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming an exception under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that "the case investigation is ongoing and therefore release of information related to the investigation would interfere with the department's ability to properly investigate and/or prosecute the criminal activity involved in the records." You also assert that the submitted reports are internal records or notations of a law enforcement agency or prosecutor that are maintained for internal use.

The submitted information reflects that the offense report in Case No. 99-037934 pertains to an active case. Therefore, we find that you have shown that the release of that report

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); Open Records Decision No. 216 (1978). Thus, we conclude that the offense report in Case No. 99-037934 may be withheld from disclosure under section 552.108(a)(1). We note, however, that information normally found on the front page of an offense report is generally considered public. *Id.*; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

The submitted information indicates that the other three offense reports do not pertain to active cases. One case appears to have resulted in a guilty plea. Prosecution of the other two cases appears to be barred by the applicable statute of limitations. Because your arguments are not consistent with the contents of these reports, we are unable to conclude that their release would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co.*; ORD 216. Furthermore, you have not demonstrated that the release of these reports would unduly interfere with law enforcement and crime prevention. *See* Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would unduly interfere with law enforcement efforts unless information does so on its face). We therefore conclude that the offense reports in Case Nos. 91-012984, 96-057981 and 97-015678 are not excepted from disclosure under section 552.108 and must be released to the requestor in their entirety.

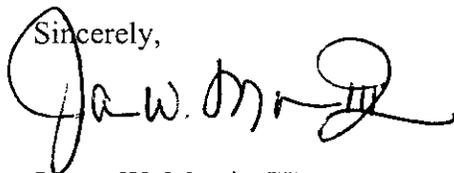
This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132408

Encl. Submitted documents

cc: Ms. Zonia Ayala
2308 N. 36th Street
McAllen, Texas 78501
(w/o enclosures)