



February 29, 2000

Ms. Elizabeth Elam
Taylor, Olson, Adkins, Srialia & Elam, L.L.P.
500 Throckmorton Street
3400 Bank One Tower
Fort Worth, Texas 76102-3821

OR2000-0774

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132715.

The City of Mansfield (the "city"), which you represent, received a request for the following information:

1. Report prepared by Alice Church regarding election and voting procedures,
2. [A]ny reports, correspondence or memorandums regarding the investigation into election procedures and subsequent missing ballots, and
3. [A]ny staff reports, correspondence or memorandums provided to the City Council regarding election procedures, the investigation or the missing ballots.

You have released some responsive information to the requestor. You have provided for our review additional information that is responsive to the request, which you assert is excepted from public disclosure under section 552.108 of the Government Code. We have reviewed the submitted information and considered the exception you assert.

In relevant part, section 552.108 states:

(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;

* * *

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with the detection, investigation, or prosecution of crime;

* * *

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the submitted information does not explain on its face how and why its release would interfere with law enforcement. You aver the disclosure of the information would divulge investigative techniques. Additionally, you state the investigation is still pending and the "release of the information would interfere with the investigation of a *possible* crime." (emphasis added). The information is a report with eleven attachments. You have not explained how or why disclosure of this information would divulge investigative techniques. We have carefully examined the information and find, at most, that the information, if released, may reveal commonly known investigative techniques. This office has stated that where the investigative techniques are commonly known, the statutory predecessor to section 552.108 did not operate to except the information from required public disclosure. Open Records Decision No. 252 at 3 (1980). Thus, the information is not excepted from disclosure as revealing investigative techniques. As to your assertion that the investigation is pending, we note the responsive documents indicate the investigation to be administrative and not criminal in nature.¹ Section 552.108 does not operate to except from disclosure non-criminal investigations, even if active. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied)(statutory predecessor to section 552.108 did not apply to an investigation of sexual harassment which did not result in a criminal investigation). We therefore conclude that you have not demonstrated how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. You must therefore release the information in its 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.

¹The documents contain administrative warnings which specifically state that the department is investigating possible employee misconduct, and that a separate criminal investigation warning will be given in the event the employee is suspected of criminal activity. Additionally, the documents nowhere indicate a crime to have occurred, and you have not advised this office of any criminal conduct related to the investigation.

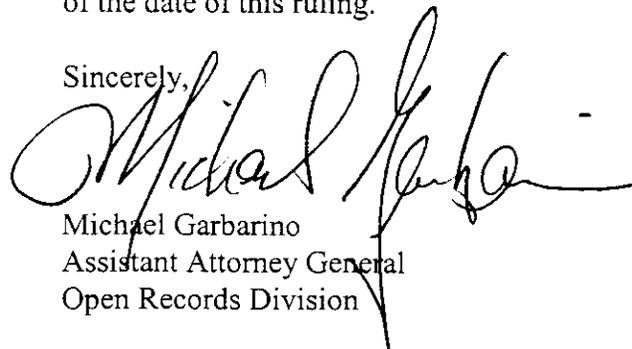
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 132715

Encl. Submitted documents

cc: Mr. Richard E. Littell
2603 Woodbridge Trail
Mansfield, Texas 76063
(w/o enclosures)