



March 13, 2000

Sergeant Wyman Hopkins
City of Rosenberg
Rosenberg Police Department
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-0990

Dear Sergeant Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132942.

The Rosenberg Police Department (the “department”) received a written request for a particular police report. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.

Section 552.108 of the Government Code excepts from required public disclosure, among other things,

(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; [or]

(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[.]

Please note that the protections offered by section 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication.

In this instance, you state that the “respective case . . . investigation has been concluded, but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication against any person.” It thus would appear that you have invoked the protection of section 552.108(a)(2). Our review of the documents at issue reveals that the status of this case is “cleared exceptional.” Based on your representation that the department’s investigation has come to an end, this office concludes that the department may withhold most of the information at issue 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). Because you have raised no other exception to disclosure, the department must release this type of information 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).

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).

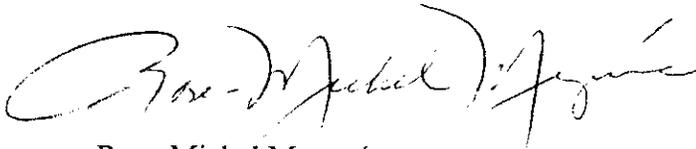
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía". The signature is fluid and cursive, with a large initial "R" and "M".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 132942

Encl. Submitted documents

cc: Mr. Ralph Worley
2911 Field Line Road
Sugarland, Texas 77479
(w/o enclosures)