



May 11, 2000

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2000-1845

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135127.

The City of El Paso (the "city") received a request for:

1. A copy of the new policy recently approved by Chief Carlos Leon regarding enforcement of the city zoning laws for sexually oriented businesses [; and]
2. Also, a list of the cases (i.e. defendant name and case number) generated from a Vice Squad operation, in which people were arrested for allegedly soliciting prostitution services through America Online accounts set up on the Internet by the Police Department.

You have submitted as Exhibit B, the El Paso Police Department Vice Investigations Action Plan, which is responsive to requested item number 1. You claim that certain portions of the information in Exhibit B are excepted from disclosure under sections 552.107 and 552.108 of the Government Code. You have not submitted for our review or raised any exceptions to disclosure for information responsive to requested item number 2. Therefore, we presume that you have released to the requestor the information that is responsive to requested item number 2. Gov't Code §552.301.

You state that the portions of the information in Exhibit B which are highlighted in orange are summarized legal opinions rendered by the city attorney to the Chief of Police and his officers. Thus, you contend that this information is excepted from disclosure under

section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. *Id.* at 5. When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* Upon review of the information in Exhibit B, we agree that the portions of the responsive information which are highlighted in orange constitute the city attorney’s advice or opinions and may be withheld from disclosure under section 552.107.

You also seek to withhold from disclosure the portions of the information in Exhibit B which you have highlighted in yellow under section 552.108(b)(1). Section 552.108(b)(1) excepts from disclosure “[a]n 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution.” You have explained in detail why releasing the portions of information that are highlighted in yellow would interfere with law enforcement. Therefore, after review of your arguments and the information in Exhibit B, we conclude that the city may withhold the information highlighted in yellow from disclosure under section 552.108(b)(1).

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).

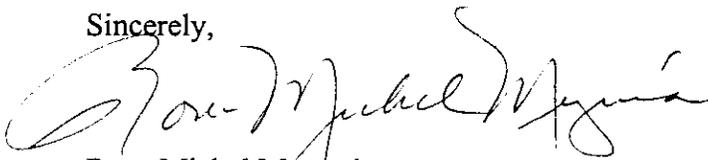
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM//ljp

Ref: ID# 135127

Encl. Submitted documents

cc: Ms. Laura Smitherman
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/o enclosures)