



May 12, 2000

Sergeant Martin Birkenfeld
Amarillo Police Department
200 SE. 3rd
Amarillo, Texas 79101-1514

OR2000-1876

Dear Sergeant Birkenfeld:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 136579.

The City of Amarillo received a request for police reports 1999-56737, 1999-89140, 1999-41001, 1999-34883, 2000-37621, 2000-12255, 2000-22697, 1999-2271, and a "6/13/00 protective order." You indicate that the requested report 1999-2271 will be released to the requestor. You seek to withhold the other requested police reports under section 552.108 of the Government Code. You contend that the requestor should present her request for the protective order to the District Clerk.

Section 552.108(a)(1) and (a)(2) except from required public disclosure

(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[.]

You advise that the requested reports 1999-56737, 1999-89140 and 1999-41001 are related to pending prosecutions. Based on your representations, we conclude that you may generally withhold reports 1999-56737, 1999-89140 and 1999-41001 under section 552.108(a)(1).

You advise that the requested reports 1999-34883 and 2000-37621 are related to pending investigations. Based on your representations, we conclude that you may also generally withhold reports 1999-34883 and 2000-37621 under section 552.108(a)(1).

We understand that the requested reports 2000-12255 and 2000-22697 relate to cases which are cleared or inactive and have not resulted in a conviction or deferred adjudication. Based on your representations, we conclude that you may generally withhold reports 2000-12255 and 2000-22697 under section 552.108(a)(2).

Please note that section 552.108 does not 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, you must release these types of information relative to the requested reports 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).

As for the requested "6/13/00 protective order," you state that

The Amarillo Police Department retains a copy of protective orders, however the original paperwork is kept in the issuing county, District Clerk's Office. I believe the request for a copy of a protective order should be made to the appropriate District Clerk's Office in order to obtain an accurate and up to date copy.

You acknowledge that the city has information responsive to the request for the protective order. The city is thus obliged either to seek an seek a decision of the attorney general permitting its withholding the requested protective order, or to disclose it. *See* Gov't Code §§ 552.002 (defining public information to include information collected, assembled or maintained by a governmental body under a law or ordinance or in connection with the transaction of official business), 552.021 (governmental body to make public information available during normal business hours), 552.301 (governmental body seeking to withhold requested information must seek an attorney general decision and state applicable exceptions within ten business days of receiving request, and submit information at issue or representative samples thereof within fifteen business days), 552.302 (if governmental body fails to comply with section 552.301, it must release requested information unless there is a compelling reason for withholding it). You have raised no exceptions to disclosure of the requested protective order. Nor have you submitted a copy of the requested order to this office. We thus have no basis for finding that the protective order is excepted from disclosure. Therefore, you must disclose it.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.

¹See also Gov't Code § 552.022(a)(17) (information also contained in a public court record must be released unless it is expressly confidential).

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 136579

Encl. Submitted documents

cc: Ms. Rachel Buckaloo
Child Protective Services
6200 I-40 West
Amarillo, Texas 79106
(w/o enclosures)