



May 22, 2000

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

OR2000-2017

Dear Ms. Hengen:

You have asked for clarification of Open Records Letter No. 2000-0957 (2000). Your request was assigned ID# 135450.

The El Paso Police Department (the "department") received two requests for information concerning an accident that occurred on January 21, 2000 at 1700 W. Paisano. The first request asked for the videotape and photographs of the accident. The second request asked for the investigative file, including any videotapes or photographs. The department claimed that the information is excepted from public disclosure under sections 552.108 and 552.130 of the Government Code.

In Open Records Letter No. 2000-0957, we concluded that this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). You received the first request for information on February 4, 2000. Your request for a decision to this office was postmarked on February 21, 2000. Gov't Code § 552.308. The tenth business day was February 18, 2000. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302. We further determined that you must withhold the social security number if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). Furthermore, you must withhold the driver's license numbers, license plate numbers, and vehicle identification numbers under section 552.130 of the Government Code.

In your request for clarification, you agree that the department must release the requested videotape and photographs because the department's request for a decision was not submitted within ten business days after its receipt of the first request for information on February 4, 2000. Gov't Code § 552.301. However, you ask as to the status of the request for the investigative file, which was not at issue in the first request.

We agree that the request for the investigative file is at issue only in the second request, not the first request. The department received the second request on February 8, 2000 and timely submitted its request for a decision on February 21, 2000.<sup>1</sup> Therefore, we will consider your claim that section 552.108 excepts the supplemental reports from public disclosure. You inform us that you have released the first four pages of the incident report as required by section 552.108(c).

Section 552.108 of the Government Code states that 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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* You may withhold the supplemental reports from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the requested information that is not otherwise confidential by law. Gov't Code § 552.007.

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

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<sup>1</sup>On May 10, 2000, the department notified this office that on May 4 it had received yet another request for a complete copy of this same investigative file; the department raised the same exceptions and made the same arguments as it did for the February 8 request for this information. The ruling we issue today governs both the information request by Mr. Rene Lujan received on February 8 and the information request by Mr. Oscar Miranda received on May 4.

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 Dep't 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 135450

Encl. Submitted documents

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