



July 10, 2000

Mr. Alberto J. Peña
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2000-2577

Dear Mr. Peña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136833.

The City of San Antonio (the "city") received a request for information pertaining to an assault case, including information related to investigations of the incident by Internal Affairs, the "Chief's Advisory Board" or other agencies or departments. We understand you to indicate that you have provided the requestor with "records related to the Chief's Advisory Board's investigation of the incident, and that, pursuant to *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), you have refused to provide him with a responsive Internal Affairs investigative report.¹ We understand you to seek the decision of this office only as to whether the city may withhold, under section 552.108 of the Government Code, a city police report responsive to the request.

¹ *The City of San Antonio* court found that section 143.089 of the Local Government Code made confidential certain information contained in a file of a municipality that had adopted civil service systems for police and fire fighters. This office considers that ruling not to be a previous determination applicable to similar files, but to be limited to the specific records that were before the court. Although that opinion suggested that a governmental body had discretion to seek or not seek an attorney general decision under the Public Information Act in order to withhold requested information, the act has since been amended to clarify that an attorney general decision must be sought in such instances. See e.g. Gov't Code § 552.301 (governmental body seeking to withhold requested information for which there is no prior determination must seek attorney general decision within ten business days of receiving request); .302 (if governmental body does not comply with requirements of section 552.301, information is presumed public and must be released unless there is compelling reason for withholding); .326 (in suit filed under act, governmental body may not raise exceptions to disclosure which were not properly raised before attorney general, except for exceptions based on federal requirements or on property or privacy interests of another person). Here, the city has not properly raised an exception to disclosure of the requested Internal Affairs records which you indicate you have withheld. As the city has not indicated the results of the subject investigation, the city has not provided adequate information for this office to determine if the subject Internal Affairs investigation file is confidential. This ruling does not address the information in that file.

Section 552.108(a)(1) excepts 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[.]

You advise that there is a pending prosecution to which the police report at issue relates. Based on your representations, we conclude that, except as noted below, you may withhold the police report in question under section 552.108(a)(1).

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, the city must release these types 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).

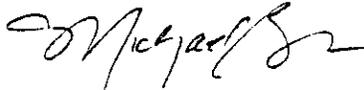
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 136833

Encl. Submitted documents

cc: Mr. Rogelio Lopez
301 Fair Avenue
San Antonio, Texas 78223
(w/o enclosures)