



August 3, 2000

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78645-0319

OR2000-2946

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137699.

The Leander Police Department (the "department") received a request for information related to criminal incidents which occurred at a specified location. You claim that the requested information is excepted from disclosure under section 552.108(a)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 (a)(1) excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See Houston Chronicle Publ'g Co. 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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You relate that release of the submitted information "could hinder this pending investigation." You have submitted three files of apparently unrelated occurrences which span an excess of two years. None of the incidents is recent. As you do not identify which investigation you contend is pending, we examine each of these incident reports separately.

File number 9610-060 is the investigation file of an incident that occurred on October 18, 1995. This file indicates that the incident investigated was the felony of "Burg of habit/assault on mental handicap." The limitation period for felonies is five years from the date of the commission of the offense of theft, burglary, or robbery, and three years from the date of the commission of the offense of most other felonies. Code Crim. Proc. art. 12.021.

As this investigation is apparently subject to prosecution, we conclude that this file may be withheld under section 552.108(a)(1).

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure by section 552.108. Gov't Code § 552.108(c). We consider "basic information" to be the type of information that is considered to be front page offense report information, expressly made public under *Houston Chronicle Publ'g Co. 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). In Open Records Decision No. 127 (1976) this office summarized the types of information considered to be basic information. Basic information must be released. Except for basic information, the department may withhold file number 9610-060.

File number 9701-073 is the investigation file of an incident that occurred on January 13, 1997. This file indicates the investigation was a "welfare check." There is no indication that a crime was committed and no follow up was required. We conclude that this investigation is no longer pending. This file may not be withheld under section 552.108(a)(1).

File number 9701-107 is the investigation file of an incident that occurred on January 20, 1997. This file includes the description "verbal dispute," and no notation of an alleged crime. As no crime is alleged to have occurred, we conclude that this investigation is no longer pending. This file may not be withheld under section 552.108(a)(1).

File number 9702-082 is the investigation file of an incident noted as "Agg. Sexual Assault/Child Abuse" This file is excepted from disclosure by section 552.101 of the Government Code. Information is excepted from disclosure by section 552.101 "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under

this chapter or in providing services as a result of an investigation.

We are of the opinion that file number 9702-082 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code and is therefore confidential by statute. As you have not cited any specific rule that the department has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 at 2 (1986). Accordingly, the department must not release this requested information.

In summary, you must withhold file number 9702-082 in its entirety and you may withhold most of file number 9610-060, but must release the “basic” information in that file, as well as all information in file numbers 9701-073 and 9701-107.

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 "Michael Jay Burns". The signature is fluid and cursive, with a prominent initial "M".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ljp

Ref: ID# 137699

Encl Submitted documents

cc: Jeanne Pierce Maynard
726 CR 266
Bertram, Texas 78605
(w/o enclosures)