



February 15, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-0591

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144228.

The Texas Department of Public Safety (the “department”) received a request for the department’s investigative file regarding a specific traffic accident. You state that the department has released all of the responsive information, except for the submitted photographs which you claim are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body “must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov’t Code § 552.302.

You state that the department received the request for information on October 16, 2000. Accordingly, the department’s deadline for requesting an attorney general decision expired ten business days later on October 30, 2000. *See* Gov’t Code § 552.301(b). However, the department did not submit its request for an attorney general decision to this office until December 8, 2000. Therefore, the department has missed its ten-day deadline as prescribed by section 552.301. Consequently, absent a compelling reason to withhold the requested information, the information must be released.

You argue that the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation 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.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office has held that the section 552.108 interests of another governmental body may demonstrate a compelling reason sufficient to overcome the section 552.302 presumption of openness. Open Records Decision No. 586 (1991).

You have submitted for our review a letter from the 24th Judicial District Attorney’s Office (the “D.A.”) which states that the information at issue pertains to a case that is pending with the D.A., and which requests that the department withhold the information from public disclosure. *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). Because the department has demonstrated that the release of the information would interfere with the D.A.’s detection, investigation, or prosecution of crime, we conclude in this instance that the department has overcome the section 552.302 presumption of openness and that the information at issue may be withheld pursuant to section 552.108 of the Government Code.

As we are able to resolve the matter under section 552.108, we do not address the section 552.103 assertion. 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

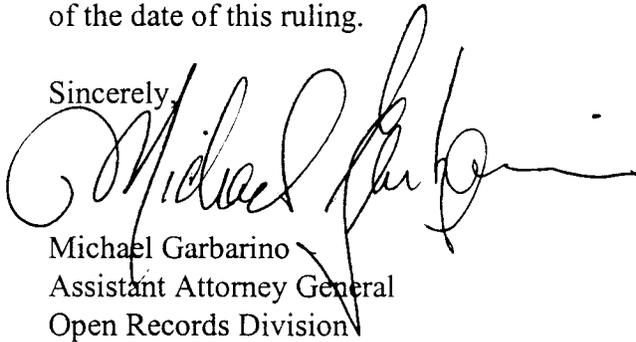
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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 Garbarino", written over a printed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG\er

Ref: ID# 144228

Encl: Submitted documents

cc: Ms. Veronica Atkinson
Patterson & Associates
P.O. Box 1010
Corpus Christi, Texas 78403
(w/o enclosures)