



June 13, 2001

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

OR2001-2510

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148376.

The City of El Paso Police Department (the "department") received three requests for information pertaining to case numbers 01-078035 and 01-078036. The first request seeks photographs and videotapes taken as evidence in case number 01-078035. The second request seeks the entire case file for case number 01-078035, including photographs and videotapes. The third request seeks the entire case file for case number 01-078036, including photographs and videotapes. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Before we address your claimed exceptions, we must address a procedural matter. You point out that the department previously received Open Records Letter Nos. 2000-2698 (2000), 2001-2031 (2001), and 2001-2042 (2001). You claim that these decisions, which involved requests for photographs, videotapes, and/or audio recordings, reach contradictory conclusions. Therefore, you ask for a clarification of whether the department must submit photographs, videotapes, or audio recordings to this office, or whether the submission of background documents to establish the content and context of the photographs, videotapes, or audio recordings is sufficient to comply with the requirements of the Public Information Act (the "Act").

Section 552.301(e)(1)(D) of the Government Code requires a governmental body to submit to this office the requested information or a representative sample of the information if there is a voluminous amount. In Open Records Letter Nos. 2000-2698 and 2001-2042, the requests were for all records regarding particular cases, including photographs, videotapes,

and/or audio recordings. Because these requests were for all records regarding particular cases, including photographs, videotapes, and/or audio recordings, the responsive information you submitted served as representative samples. Therefore, your submissions were sufficient under section 552.301(e)(1)(D), even though you did not submit the photographs, videotapes, and/or audio recordings.

In Open Records Letter No. 2001-2031, the requestor asked only for the photographs and a videotape, which you did not submit to this office. When a request is limited to photographs, videotapes, and/or audio recordings, the photographs, videotapes, and/or audio recordings must be submitted because there is no other responsive information that may serve as a representative sample. *See* Open Records Decision Nos. 499 (1988), 497 (1988). The background information that you submitted in Open Records Letter No. 2001-2031 does not comply with section 552.301 because the background information is not responsive information. Of course, the best approach is to always submit the requested information. We hope that this serves to clarify this matter for the department.

We now address your claimed exceptions with respect to each of the present requests for information. The first request seeks only photographs and videotapes taken as evidence in case number 01-079035. You have submitted for our review, as a representative sample of the responsive information, a supplemental report from that case that describes the photographs taken. You did not submit any information with respect to the requested videotapes. As explained above, when a request is only for photographs, videotapes, and/or audio recordings, this information must be submitted because there is no other responsive information that may serve as a representative sample for the photographs, videotapes, or audio recordings. Thus, as to the photographs and videotapes requested by the first requestor, the department did not comply with section 552.301(e)(1)(D) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and "must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, the department must release the requested photographs and videotapes to the first requestor.

The second and third requests, which were received from the same requestor, seek the entire case files for case numbers 01-078035 and 01-078036, including photographs and videotapes. You have submitted for our review copies of the offense reports for each of these cases. As explained above, because these requests were for photographs and videotapes, as well as other information concerning those cases, the information you have

submitted serves as representative samples of the information responsive to the second and third requests.¹ Therefore, your submissions with respect to the second and third requests were sufficient under section 552.301 even though you did not submit the responsive photographs or videotapes. However, because the photographs and videotapes sought in the second request are the same as those sought in the first request, the department has waived its section 552.108 claim with respect to the photographs and videotapes responsive to the second request by its failure to comply with section 552.301 as to the first request. *See* Gov't Code § 552.007. Therefore, the department must release the photographs and videotapes responsive to the second request to the second requestor.

We now address your claimed exceptions with respect to the remaining information. You claim that the information responsive to the second and third requests should be excepted from disclosure under section 552.108 of the Government Code. 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 both cases requested by the second requestor "relate to the same incident involving several related motor vehicle accidents," and that "the [department's] investigation in both cases is still open, active and pending." You further state that "[u]pon completion of the initial investigation relating to both cases, both cases will be presented to the District Attorney's Office for their consideration regarding the filing of charges." We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, the department may withhold the remaining information responsive to the second and third requests based on section 552.108(a)(1).² We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Because section 552.108 is dispositive of this issue, we need not address your other claimed exception.

To summarize, we conclude that: (1) the department must release the photographs and videotapes responsive to the first request to the first requestor; (2) the department must release the photographs and videotapes responsive to the second request to the second requestor; and (3) with the exception of the basic front page offense and arrest information, the department may withhold the remaining information responsive to the second and third requests from the second requestor based on section 552.108(a)(1) of the Government Code.

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,



Karen A. Eckler
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148376

Enc: Submitted documents

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