



July 16, 2001

Mr. Dewey Duane Britt  
First Assistant County Attorney  
Ector County  
Ector County Courthouse, Room 201  
Odessa, Texas 79761

OR2001-3061

Dear Mr. Britt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149469.

The Ector County Sheriff (the "sheriff") received a request for records relating to an internal investigation conducted by the West Texas Narcotics Enforcement Task Force on three of its officers. You claim that the responsive information, consisting of two witness statements, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Based on the information before us, it appears that you did not request an attorney general decision raising section 552.108 within ten business days of the sheriff's receipt of the records request. *See* Gov't Code § 552.301. This failure results in the presumption that the requested documents are public. *See* Gov't Code § 552.302. However, in Open Records Decision No. 586 (1991), this office concluded that the need of a law enforcement agency, other than the one that received the written request, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. You indicate that the Federal Bureau of Investigation has a compelling section 552.108 interest in having the requested documents withheld. Therefore, we shall address your argument raised under section 552.108 of the Government Code.

Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that the information at issue relates to a civil rights investigation being conducted by the FBI, and that the investigation may result in civil action as well as criminal prosecution against the officers in question. In support, you have submitted for our review a letter dated May 3, 2001 from the FBI to Ector County Sheriff Mark Donaldson which states that the investigation in question has been forwarded to the Department of Justice for a determination as to whether the case will be further investigated and whether possible charges or sanctions will be imposed. Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to that incident. Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586. Upon consideration of your arguments and our review of the information submitted to this office, we conclude you have demonstrated the applicability of section 552.108 to the requested information. Therefore, you may withhold the requested information from disclosure at this time under section 552.108(a)(1).

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 cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 149469

Enc. Submitted documents

c: Ms. Melissa Hendrix  
P.O. Box 60150  
Midland, Texas 79711  
(w/o enclosures)