



August 22, 2001

Mr. Russell W. Malm
County Attorney
Midland County
200 West Wall Street, Suite 104
Midland, Texas 79701

OR2001-3715

Dear Mr. Malm:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150446.

The Midland County Auditor (the "auditor") received a request for copies of the auditor's reports pertaining to the Midland County District Attorney's Office's use of a forfeiture fund account. The requestor also asks for copies of information related to the Midland County Constables' use of county gasoline cards and the excise tax issue. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.¹

Initially, we note that you only submitted information that is responsive to the request for the auditor's reports pertaining to the use of the forfeiture fund account. Therefore, we presume that, to the extent it exists, you have released the information related to the Midland County Constables' use of county gasoline cards and the excise tax issue. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information it must release information as soon as possible under circumstances).*

Next, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) states that a completed report, audit, evaluation, or

¹ Although you claim that the submitted information may be excepted from disclosure pursuant to section 552.101, you offer no supporting reasons. Therefore, we do not address your claim regarding section 552.101 of the Government Code. *See Gov't Code § 552.301(e)(1)(A) (requiring governmental body to explain why stated exceptions apply to submitted information).*

investigation made of, for, or by a governmental body is expressly public, except as provided by section 552.108 of the Government Code. The submitted information constitutes a completed audit under section 552.022(a)(1). Thus, unless the submitted information is expressly confidential under other law or is excepted pursuant to section 552.108, it is public information. You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Accordingly, we address your section 552.108 claim regarding the submitted information.

Section 552.108 of the Government Code provides that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [disclosure] if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the auditor’s reports which are contained within the submitted information allege several instances of mismanaged funds, discrepancies in the account, and abuse that may possibly be criminal in nature. You also state that the Texas Rangers are currently conducting an investigation of these allegations using the submitted information and that you have been advised by them that release of the requested information would interfere with their investigation. Based on your representations and our review of the submitted information, we find that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Therefore, we conclude that the submitted information is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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); *see also* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation, section 552.108 may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 150446

Enc. Submitted documents

cc: Mr. Ed Todd
Midland Reporter-Telegram
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Midland, Texas 79701
(w/o enclosures)