



November 2, 2001

Mr. Noble D. Walker, Jr.
Scott, Walker & Morgan, LLP
P.O. Box 1353
Greenville, Texas 75403-1353

OR2001-5035

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153640.

The City of Greenville Police Department (the “department”), which you represent, received a request for “all records” pertaining to the department’s responses to calls for service to a specified current and specified former residence of two named individuals. You indicate that the department has or will release information responsive to the request. You assert, however, that the responsive information you have identified in the submitted Exhibit B is excepted from disclosure under sections 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We understand you to argue the applicability of section 552.108(a)(1) of the Government Code for the entirety of, or in the alternative, the marked portions of Incident Reports 9955870 and 2000-00016292, as well as the marked portions of Incident Report 2000-00005965.¹ In pertinent part, section 552.108(a)(1) states that information “held by a law enforcement agency . . . 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[.]” Generally, a governmental body claiming section 552.108 must reasonably explain, if the

¹You cite to section 552.108(a)(1), but also to section 552.108(5)(a), a nonexistent provision. Based on your comments, we have considered the latter citation to be an assertion of section 552.108(a)(1).

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). None of the information before us indicates that any of the information at issue pertains to any active criminal case or cases, nor do we believe that you have demonstrated how the release of any of the information at issue would interfere with the investigation or prosecution of crime. Accordingly, none of the information is excepted from disclosure under section 552.108.

We next address your assertion that certain information you have marked in Exhibit B is excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We find the applicable provision in this instance to be section 552.1175 of the Government Code.² Recently added by the 77th Legislature, section 552.1175 states in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

We have marked the information that is subject to section 552.1175.³ However, you do not inform this office, nor does any of the submitted information indicate, whether the peace officer has elected confidentiality for information about him in accordance with the above-cited subsection 552.1175(b)(1) and (2). If so, the information we have marked must be

²Act of May 2, 2001, 77th Leg., R.S., ch. 119, § 3, 2001 Tex. Gen. Laws 223.

³Because we find section 552.1175 to be dispositive in this instance, we do not separately address the section 552.117 assertion.

redacted in accordance with section 552.1175. If not, we conclude that the department may not withhold any of the marked information.

In summary, none of the information may be withheld under section 552.108. If the peace officer has elected confidentiality under section 552.1175(b), then the information we have marked must be withheld and the remaining information released. Absent an election under section 552.1175(b), the information must be released in its entirety.

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 the word "Sincerely,".

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 153640

Enc. Submitted documents

c: Mr. Aaron K. Williams
840 FM 3427
Greenville, Texas 75401
(w/o enclosures)