



August 19, 2002

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2002-4542

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167260.

The Tarrant County Sheriff's Department (the "department") received a request for an internal affairs investigation involving the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution

Generally, a governmental body claiming section 552.108(a)(1) or (b)(1) 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). You contend that the submitted information “contains the identities and statements of witnesses that were compiled in connection with an Internal Affairs Investigation.” You further contend that release of these identities and statements “might subject these witnesses to possible intimidation or harassment,” and prevent these individuals from cooperating in the future. Therefore, you seek to withhold the information under section 552.108. However, in *Morales v. Ellen*, the El Paso Court of Appeals determined that an internal affairs investigation could not be withheld under section 552.108 unless the internal affairs investigation resulted in a criminal investigation or prosecution. 840 S.W.2d 519, 525-26 (Tex. App.--El Paso 1992, writ denied). Here, the witness identities and statements were clearly collected as part of an internal affairs investigation. Furthermore, you do not indicate, nor does it appear, that the internal affairs investigation resulted in a criminal investigation or prosecution. Therefore, the department may not withhold any of the submitted information under section 552.108, but must release the information in full to the requestor.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

¹Some of the submitted information consists of confidential information that is not subject to release to the general public. *See* Gov't Code §§ 552.117, 552.352; Health & Safety Code § 611.002. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023; Health & Safety Code §§ 611.002, .004. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or her authorized representative, the department should again seek our decision.

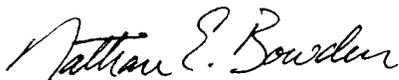
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 167260

Enc: Submitted documents

c: Ms. Sandra Miles
Tarrant County Sheriff's Department
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Fort Worth, Texas 76196
(w/o enclosures)