



October 30, 2002

Ms. Julie B. Ross
Karger Key Barnes & Springer, P.C.
300 West 3rd Street, Suite 1700
Fort Worth, Texas 76102 -2923

OR2002-6178

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171480.

The Waxahachie Police Department (the "department"), which you represent, received a request for copies of any correspondence between a certain individual and employees of the department. You state that all information responsive to the instant request has been provided to the requestor except for the document that you have submitted for our review. You claim that the submitted document, labeled as "Exhibit 2," is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted document.

You contend that the submitted document relates to an internal affairs investigation and should be excepted under section 552.108. Section 552.108 of the Government Code states in pertinent part 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). We note that the section 552.108 exception is inapplicable to a police department's internal administrative investigation that does not involve an investigation of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.-El Paso 1992, writ denied) (Gov't Code § 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of Gov't Code § 552.108 not applicable to internal affairs investigation file when no criminal charge

against officer results from investigation of complaint against police officer). You inform us that the internal affairs investigation pertains to allegations of the following criminal activity: impersonating a public official, soliciting a gift to a public servant, and abuse of official capacity. You state that the "Exhibit 2" "contains detailed criminal and factual allegations that are critical to the Department's ongoing investigation[.]" Additionally, you assert that you will file criminal charges upon completion of the internal investigation, if appropriate. Based upon your statements and our review of the submitted information, we find that you have demonstrated that "Exhibit 2" "deals with the detection, investigation, or prosecution of crime" and that its release "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Therefore you may withhold "Exhibit 2" per section 552.108(a)(1) of the Government Code.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).

¹Because we are able to make this determination, we need not address your arguments under section 552.101.

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 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,



Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 171480

Enc. Submitted documents

c: Ms. Suzette Pylant
313 Cynisca Street
Waxahachie, Texas 75165 -2307
(w/o enclosures)