



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 10, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-0891

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176953.

The Harris County Sheriff's Department (the "department") received two requests for information on December 2, 2002 and December 4, 2002. Based upon your representation that the first requestor has since clarified his request, and the department has supplied him with the requested information, we will consider the matter closed with regard to that request. However, the second request remains and the requestor specifically seeks investigation reports or memorandum reports, including final outcomes, pertaining to sustained internal affairs complaints from January 1, 2001, to the present day [December 4, 2002]. You claim that the requested information is excepted from disclosure by section 552.108, and that Exhibits B and D contain information that is also excepted under section 552.101 of the Government Code. We have considered your arguments and reviewed the representative sample of information submitted to this office.¹

Initially, we note that the document submitted as Exhibit B (Case No. 99-0192-1028) pertains to a complaint made in 1999 that led to a sustained internal affairs investigation that occurred in 2000. As the request here at issue specifically seeks investigation reports or memo reports pertaining to sustained internal affairs complaints from January 1, 2001, to the

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

present day [December 4, 2002], Exhibit B is not responsive to the request. Therefore, we do not address whether Exhibit B is subject to public disclosure and the department is not obligated to release it.

We also note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information pertains to completed investigations. Thus, this information must be released under section 552.022(a)(1) unless it is expressly confidential under other law or excepted from disclosure under section 552.108.

We next address your arguments under section 552.108 of the Government Code. 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;
- (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

Generally, a governmental body claiming section 552.108(a)(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). Because you state that Exhibit D is representative of the types of internal affairs investigations that resulted in pending criminal investigations, we find that release of the requested information would presumptively interfere with law enforcement. Therefore, section 552.108(a)(1) is applicable to Exhibit D and the types of internal affairs investigations that it represents.

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit D and the types of investigations it represents from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You also claim that Exhibit C is excepted from disclosure by section 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibit C represents the type of internal affairs investigations that did not result in convictions or deferred adjudications. However, after careful review, it does not appear to this office that the information submitted in Exhibit C relates to a criminal investigation by the department. A review of Exhibit C indicates that it is the result of an administrative investigation that revealed a violation of policy. We therefore conclude that the department has not demonstrated that the information submitted in Exhibit C is excepted from disclosure under section 552.108. *See* Gov't Code § 552.108(a)(2), (b)(2); *see also Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied) (stating that statutory predecessor to section 552.108 was not applicable where no criminal investigation or prosecution of police officer resulted from internal affairs investigation); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation). As the information in Exhibit C was not created in conjunction with a criminal investigation, the department may not withhold Exhibit C or any of the type of information that Exhibit C represents pursuant to section 552.108.

With regard to Exhibit C, we note that the submitted documents do contain information protected by section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, personal pager numbers, and family member information of peace officers, regardless of whether the officer elected confidentiality under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and family member information of a peace officer under section 552.117(2)). The department must withhold those portions of Exhibit C that reveal a peace officer's home address, home telephone number, social security number, personal pager number, and that reveals whether the officer has family members. The department must also withhold the officer's former home addresses and telephone information. *See* Open Records Decision No. 622 (1994). We have marked the information in Exhibit C that is subject to section 552.117(2) and must be withheld.

In summary, the department may withhold Exhibit D and the types of investigations it represents from disclosure based on section 552.108(a)(1), with the exception of the basic front page offense and arrest information. The department must release Exhibit C and the types of investigations it represents with the exception of the information we have marked that is protected under section 552.117(2).

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).

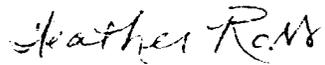
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 176953

Enc: Submitted documents

c: Mr. Jeremy Rogalski
Reporter
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(w/o enclosures)