



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 15, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2003-2529

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179377.

The City of El Paso Police (the "city") received a request for case number 02-363058. The requestor also seeks all information regarding any role a particular state representative may have had in the case. You state that case number 02-363058 was the subject of a prior ruling issued by this office. Open Records Letter No. 2003-0512 (2003). You further state that because the circumstances surrounding the issuance of that ruling have not changed, the city has released basic information but has withheld the remaining portions of the case file under section 552.108 of the Government Code. *See* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations); *see also* Gov't Code § 552.108(c) (stating that basic information may not be withheld under Gov't Code § 552.108); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense).

As for the second part of the request, you state that the only responsive information that the city maintains are the records of the Police Department Professional Responsibility Unit (the "PRU"). You state that several of the PRU documents are purely administrative and, therefore, will be released. You claim that the remaining PRU documents are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.108 of the Government Code states 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).

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain 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(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you explain that the submitted PRU documents contain information that is similar in nature and content to the information contained in case number 02-363058. You also state that the release of the submitted documents will harm the prosecution of the criminal case. Based on your representations and our review of the submitted documents, we find that the release of the PRU documents would interfere with the detection, investigation, and prosecution of crime. *See Houston Chronicle Publ'g 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)(court delineates law enforcement interests that are present in active cases). Thus, the city may withhold the remaining PRU documents under section 552.108(a)(1).¹ *But see Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. 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 IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

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

¹Because we are able to make a determination under section 552.108, we need not address your arguments under section 552.130 of the Government Code.

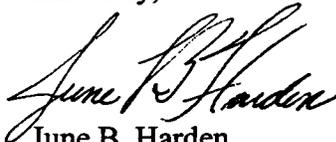
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 179377

Enc: Submitted documents

c: Mr. Robert C. Moore
Executive Editor
El Paso Times
P.O. Box 20
El Paso, Texas 79901-1470
(w/o enclosures)