



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 16, 2003

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

OR2003-2575

Dear Ms. Sample:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179476.

The El Paso Police Department (the "department") received three requests from the same requestor concerning a specified incident and a related investigation being conducted by the department's internal affairs division. Specifically, the requestor seeks (1) all paperwork done by a named police officer of the department's internal affairs division on January 6, 2003, (2) supplements to offense report number 03-002287, and (3) all paperwork done by another named officer on January 21, 2003. You claim that the responsive information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 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*

¹ We 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.

Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that the responsive information consists of two reports of pending investigations, one administrative investigation conducted by the department's internal affairs division, and one criminal investigation. The criminal investigation involves a police officer, and pertains to the same incident and subject matter as the internal affairs investigation. You advise that information collected in the course of the criminal investigation is also contained in the internal affairs investigation. Based upon your representations and our review, we determine that release of the responsive information would interfere with the detection, investigation, or 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). We therefore agree that section 552.108(a)(1) is applicable. See Open Records Decision No. 350 at 3-4 (1982) (if complaint against police officer that may result in criminal charges is under active investigation, information may be withheld under statutory predecessor during pendency of investigation); cf. *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, (Tex. App. 2002, no pet. h.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution).

However, section 552.108 does not apply to basic information about a crime or arrest. 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). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the requested information from disclosure based on section 552.108(a)(1).

With respect to basic information, we note you raise section 552.117 of the Government Code. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.² We note, however, that section 552.117(2) only protects a peace officer's section 552.117 information in the context of the officer's role as a peace officer, and not as a suspect, complainant, or victim in a criminal investigation. Therefore, the department may not withhold any of the submitted information under section 552.117(2) in this instance.

We further note, however, that some of the basic information in this case is also subject to section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

- (a) This section applies only to:

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

(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.

Basic information includes the location of the offense. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision No. 127 at 3 (1976). Here, the location of the offense is the officer's home address. You do not state, and the documents do not reflect, whether the police officer at issue has elected to keep his home address, home telephone number, social security number, or information that reveals whether the officer has family members confidential in accordance with section 552.1175(b). If the officer did make such an election, then this information is confidential with respect to the general public under section 552.1175 of the Government Code.

In summary, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code, with the exception of basic information. However, the department must withhold the location of the offense under section 552.1175 of the Government Code if the police officer at issue has elected to keep his home address confidential.

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 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 179476

Enc: Submitted documents

c: Ms. Veneranda Soltero
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Socorro, Texas 76627
(w/o enclosures)