



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2004

Mr. Brendan Hall  
Law Offices of Brendan Hall  
P.O. Box 2725  
Harlingen, Texas 78550

OR2004-0731

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194632.

The Harlingen Waterworks System (the "system"), which you represent, received a request for a copy of a letter from a named individual. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See Open Records Decision Nos. 493 at 2 (1988), 287 (1981)*. Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See Attorney General Opinion MW-575 (1982)* (regulatory agency not "law enforcement agency," even though it is charged with duty of enforcing its own statute); Open Records Decision No. 199 (1978) (agency whose function is essentially regulatory is not "law enforcement agency" for purposes of statutory predecessor to Gov't Code § 552.108). However, an agency that does not qualify as a law enforcement agency may claim, under certain limited circumstances, that section 552.108 protects records in its possession. *See, e.g., Attorney General Opinion MW-575 (1982)*,

Open Records Decision Nos. 493 (1988), 272 (1981). If a non-law enforcement agency's investigation reveals possible criminal conduct that the agency intends to report to the appropriate law enforcement agency, then section 552.108 will apply to information gathered by the non-law enforcement agency if its release would interfere with law enforcement. *See* Gov't Code 552.108(a)(1), (b)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 (1988), 272 (1981). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to withhold the information.

In this instance, you concede that the system is not a law enforcement agency for purposes of section 552.108. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 199 (1978). You inform us, however, that the submitted information has been provided to the Harlingen Police Department and the Texas Rangers in connection with an ongoing criminal investigation by those law enforcement agencies. You have submitted a letter from Sgt. David Means of the Harlingen Police Department. His letter confirms that a criminal investigation is ongoing and requests that the information to which the requestor seeks access be withheld from the public at this time. Based on your representations, the letter from the police department, and our review of the information at issue, we conclude that the system may withhold the submitted information under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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). As we are able to make this determination, we need not address your claim under section 552.103.

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

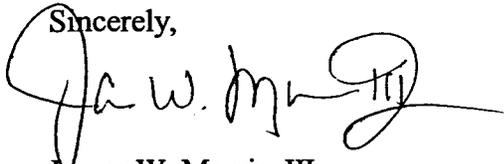
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 194632

Enc: Submitted documents

c: Mr. Fernando del Valle  
Valley Morning Star  
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(w/o enclosures)