



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2004

Mr. Henry W. Prejean
Criminal District Attorney's Office
Brazoria County
111 E. Locust, Suite 408A
Angleton, Texas 77515

OR2004-3428

Dear Mr. Prejean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200382.

The Brazoria County Sheriff's Department (the "department") received a request for information pertaining to internal affairs investigations concerning a specified deputy that have been initiated since August 1, 2003. You claim that some of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that claims that information requested of it is excepted from disclosure under section 552.108(b)(1) must reasonably explain how and why that subsection is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You indicate that the submitted information concerns an ongoing internal affairs investigation that is being conducted by the department to determine whether or not the specified deputy violated certain departmental policy. We note, however, that section 552.108 is generally not applicable to investigatory records that are purely administrative in nature. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (predecessor to section 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 section 552.108 not applicable to Internal Affairs Division investigation file when no criminal charge against officer results from investigation of complaint against police officer). We further note that you do not argue, nor does it appear, that this ongoing internal affairs investigation resulted in any criminal investigation into the alleged conduct of the specified deputy. Thus, we have no basis for concluding that any portion of the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. Consequently, the department may not withhold any portion of the submitted information on that basis.

However, we note that portions of the submitted information are excepted from disclosure pursuant to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or information that reveals whether the peace officer has family members.¹ Gov't Code § 552.117(a)(2). Based on our review of the submitted information, we conclude that the department must withhold the information that we have marked pursuant to section 552.117(a)(2) of the Government Code.

Finally, we note that a portion of the remaining submitted information is copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making such copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the information that we have marked pursuant to section 552.117(a)(2) of the Government Code. The department must release the remaining submitted information to the requestor. However, in doing so, the department must comply with the applicable copyright law for the portion of the information which is copyrighted.

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

¹ Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 200382

Enc. Marked documents

c: Mr. Michael Wright
The Facts
P.O. Box 549
Clute, Texas 77531
(w/o enclosures)