



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2004

Mr. Mark E. Sossi  
Attorney at Law  
3 North Park Plaza  
Brownsville, Texas 78521

OR2004-8320

Dear Mr. Sossi:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210035.

The Brownsville Police Department (the "department"), which you represent, received a request for (1) the civil service file of a named officer, (2) records pertaining to any change in rank for the named officer, and (3) records pertaining to crimes or violations of departmental rules by the named officer. You state that the information responsive to items (1) and (2) has been released to the requestor. However, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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. In *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied), the El Paso Court of Appeals determined that an internal affairs investigation could not be withheld under section 552.108 unless the internal affairs investigation resulted in a criminal investigation or prosecution.

You state that the submitted information pertains to the criminal investigation of "allegations of official oppression, public lewdness, and tampering with a witness" made against the named officer. You further state, and provide documentation showing, that the

Cameron County District Attorney's Office has declined to prosecute this case. Thus, you assert that the submitted information pertains to a closed criminal investigation that did not result in a conviction or deferred adjudication. After reviewing your arguments and the submitted information, we conclude that section 552.108(a)(2) is applicable in this instance.

However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." See Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.<sup>1</sup> See Gov't Code § 552.007.

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,

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<sup>1</sup>Because our ruling is dispositive, we need not address your remaining arguments.

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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/krl

Ref: ID# 210035

Enc. Submitted documents

c: Mr. David Robledo  
The Brownsville Herald  
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(w/o enclosures)