ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2004

Ms. Florence R. Upton
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-10032

Dear Ms. Upton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213581.

The San Antonio Police Department (the "department") received a request for the following information:

1. A copy of the incident/offense report for a burglary or theft that happened on or about August 23, 2004 at 3422 GREEN SPG reported by [a named individual].

2. A survey and copy of all Police incident/offense reports involving [the named individual] for any thefts, burglaries, vandalism, and/or criminal mischief from August 23, 1999 to the present.

3. A survey and copy of all Police incident/offense reports involving [3422 Green Spring] for any thefts, burglaries, vandalism, and/or criminal mischief from July 18, 1999 to the present.

You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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 Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You have submitted three incident reports for review, and you state that the reports relate to open investigations. Based on your representations and our review, we find that release of incident report number 04-582727, submitted as Attachment II, 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). Accordingly, we agree that section 552.108(a)(1) is applicable to this report.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *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 Attachment II from disclosure pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of Attachment II that is not otherwise confidential by law. Gov't Code § 552.007.

With respect to the remaining reports, however, we note that the statute of limitations for the offenses listed in the reports has expired. *See* Penal Code §§ 20.03(b)(2), (3) (criminal mischief causing pecuniary loss of $50 or more but less than $1,500 is a misdemeanor), 31.03(e)(2)(A) (theft of property valued $50 or more but less than $500 is a misdemeanor), Code of Criminal Procedure art. 12.02 (indictment or information for misdemeanor offense may be presented within two years from date of commission of offense, and not afterward). You do not explain how the remaining submitted information pertains to pending cases. We therefore find you have failed to reasonably explain how release of the remaining incident reports, submitted as Attachments III and IV, would interfere with law enforcement. We therefore determine the department may not withhold this information pursuant to section 552.108 of the Government Code.

We note that Attachment III contains information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

> (a) Information is excepted from the requirements of Section 552.021 if the information relates to:

> (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
>
> (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We have marked the information in Attachment III that the department must withhold under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold Attachment II pursuant to section 552.108(a)(1) of the Government Code. We have marked information in Attachment III that must be withheld under section 552.130 of the Government Code. The department must release the remainder of Attachment III and Attachment IV to the requestor.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 213581

Enc: Submitted documents

c: Mr. Scott A. Kemp
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(w/o enclosures)