ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Mr. Joseph Gorfida
City Attorney
City of Richardson
P. O. Box 831078
Richardson, Texas 75083-1078

OR2005-10022

Dear Mr. Gorfida :

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 235931.

The City of Richardson (the "city") received a request for an incident report. 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) 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 state that case number 91-43316 is an open and active investigation. We note, however, that this report involves an allegation of assault that occurred on November 17, 1991. The longest possible statute of limitations for the offense described in this report is three years. *See* Crim. Proc. Code art. 12.01(6) (providing limitation period of three years for any felony offense not listed in subsections one through five). More than three years elapsed between November 17, 1991, and the date you received this request for information, August 19, 2005.

You have neither informed this office that any criminal charges were filed within the limitations period nor have you otherwise explained how release of this information will interfere with the detection, investigation, or prosecution of crime. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold the submitted information on this basis. As you raise no other exceptions, the submitted information must be released to the requestor.[1]

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

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[1]We note that the information being released contains the requestor's social security number and Texas driver's license number, which would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to it. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles). If the city receives a future request for this information from a person other than the requestor or her authorized representative, the city should again seek our decision.

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 Office of the Attorney General 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. 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,

Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 235931

Enc. Submitted documents

c: Ms. Martha Garza Garcia
3821 Moss Wood Drive
Garland, Texas 75042
(w/o enclosures)