



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2008

Mr. Denis C. McElroy  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-02908

Dear Mr. McElroy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 303782.

The Fort Worth Police Department (the "department") received a request for the internal affairs investigation file pertaining to the indefinite suspension of a specific officer. You state that the department is releasing information that was previously released to the requestor's client. *See generally* Gov't Code § 552.007 (providing prohibition against selective disclosure of public information). You claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt,*

551 S.W.2d 706 (Tex. 1977). You state that the department conducted administrative and criminal investigations in response to an allegation that one of its officers violated department rules and provisions of the penal code. You further state that the officer was subsequently arrested and his case is before the grand jury. You explain that the administrative and criminal investigations arise from the same incident and will undoubtedly involve the same witnesses and evidence. Finally, you state that a representative from the Tarrant County District Attorney's Office has asked that the administrative documents be withheld so as not to interfere with the ongoing criminal prosecution. Based upon these representations and our review of the submitted documents, we find that the release of the requested information 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); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, Gov't Code § 552.108 may be invoked by any proper custodian of information which relates to incident). *But see Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.—El Paso 1992, writ denied) (Gov't Code § 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 Gov't Code § 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

Section 552.108, however, is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information which must be released, the department may withhold the requested information under section 552.108(a)(1) of the Government Code.<sup>1</sup> We note that you have the discretion to release all or part of the requested information that is not otherwise confidential by law. 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 file suit in

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<sup>1</sup>Because section 552.108(a)(1) is dispositive, we need not address your additional arguments against disclosure.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

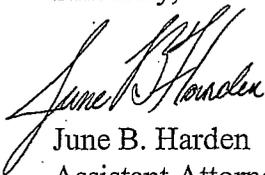
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/sdk

Ref: ID# 303782

Enc: Submitted documents

c: Mr. Richard W. Carter  
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(w/o enclosures)