



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2008

Ms. Zindia Thomas
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2008-07648

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 312249.

The Office of the Attorney General (the "OAG") received a request for the Asset Forfeiture Reports filed by thirty-nine law enforcement agencies for fiscal year 2007. You explain you will release some information but assert the remainder is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered your claimed exceptions and have reviewed the information at issue.

Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Section 552.108(b)(1) excepts from public disclosure an internal record or notation of a law enforcement agency 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. *Id.* § 552.108(b)(1). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Where a non-law enforcement agency is in the custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

The OAG informed the Harlingen Police Department (the "department") of the request, and the department asks that the two pages attached to its report be withheld from disclosure pursuant to section 552.108. The department argues release of the entries accompanied by blank spaces in the "Results/Awarded Date" column would interfere with the investigation or prosecution of the underlying criminal cases because these cases are still pending. Based on this argument and our review of the information, we agree that release of such entries will 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, the OAG may withhold these entries pursuant to section 552.108(a)(1) of the Government Code.

Next, the department argues section 552.108(b)(1) excepts the entire "Results/Awarded Date" column from disclosure because release would reveal "law enforcement methods and procedures in settling and resolving these types of cases." We have reviewed this column and conclude that while the column reveals the final disposition of the forfeited property, it does not reveal any law enforcement methods and procedures. Thus, the OAG may not withhold the entire column under section 552.108(b)(1).

The department further argues section 552.108(b)(1) excepts from disclosure the names of police officers listed in the "Seizing Officer" column because "[a] majority of the officers listed are narcotics officers who often work undercover." The department contends release of this information would increase the chance of the officers being put in harm's way. Having considered the department's assertion, we conclude the OAG may withhold the names of undercover officers only because release of this information would interfere with law enforcement. *See generally* Open Records Decision No. 211 at 4 (1978) (personnel involved in undercover narcotics work excepted under predecessor to section 552.108). The OAG must release the other officers' names.

Lastly, the OAG argues section 552.130 excepts from public disclosure the vehicle identification numbers it marked. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle title or registration. The OAG must withhold the marked vehicle identification numbers only if they relate to a motor vehicle title or registration issued by the state of Texas. Otherwise, they are not protected under section 552.130 and must be released. The OAG must release the rest of the two pages attached to the department's Asset Forfeiture Report.

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 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 312249

Enc: Submitted documents

c: Mr. John Burnett
National Public Radio
1303 West 42nd Street
Austin, Texas 78756
(w/o enclosures)

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551
(w/o enclosures)

Chief Daniel Castillo
Harlingen Police Department
1102 South Commerce
Harlingen, Texas 78550
(w/o enclosures)