



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2008

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2008-10128

Dear Mr. Weir:

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#321295.

The San Antonio Police Department (the "department") received a request for the investigative reports and witness statements in two specified cases. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception claimed and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply not later than the tenth business day after receiving the request. Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than fifteenth business days after the date of its receipt of the request (1) written comments stating reasons why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence of the date on which the governmental body received the request; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information requested is voluminous. *See id.* § 552.301(e)(1). You state the department received the request for information on March 24, 2008. You did not request a decision from this office or submit the information at issue until July 7, 2008. Consequently, you failed to comply with the procedural requirements of section 552.301 in requesting the

decision from our office. Therefore, the requested information is presumed to be public information. *See id.* § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason to withhold information. *See* Open Records Decision No. 586 at 3 (1991). You state, and provide supporting documentation, that the Bexar County District Attorney's Office (the "district attorney") has objected to the release of this information and asserts section 552.108. Thus, we will consider this argument.

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." Gov't Code § 552.108(a). 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 id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney states that the requested offense reports relate to a pending criminal prosecution. Based upon this representation, we conclude that the release of the offense reports 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).

However, section 552.108 does not except from disclosure 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* 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, the requested information may be withheld from disclosure based on section 552.108(a)(1). The department has the discretion to release all or part of the remaining 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 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). If the governmental body does not file suit over 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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/jb

Ref: ID#321295

Enc. Submitted documents

c: Mr. Manuel L. Gutierrez  
6702 Spring Haven  
San Antonio, Texas 78249  
(w/o enclosures)

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