



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2008

Ms. Cecilia Gamez  
McAllen Police Department  
P. O. Box 220  
McAllen, Texas 78501

OR2008-11045

Dear Ms. Gamez:

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# 318743.

The McAllen Police Department (the "department") received a request for all information pertaining to a specified arrest. You state you have provided some of the requested information to the requestor. You claim that the submitted incident report 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 of the Government Code provides in part:

(a) 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:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). You state that the submitted incident report relates to a pending criminal prosecution. We note, however, that the incident report involves allegations of possession of narcotics that occurred in November 2000. The statute of limitations for this

type of offense is three years. *See* Crim. Proc. Code arts. 12.01(6) (limitations for all other offenses not listed in subsections (1) through (5) is three years from date of offense). More than three years have elapsed since the events giving rise to the investigation in the submitted incident report and you have not informed this office that any criminal charges were filed within the limitations period. Pursuant to section 552.303 of the Government Code, we notified the department by letter that we needed additional information regarding whether or not charges were filed within the limitations period. *See* Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). As of this date, however, we have not received a response from the department. Because the department did not respond to our letter, the department failed to comply with section 552.303(d). *See id.* § 552.303(d) (governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date notice is received).

Pursuant to section 552.303(e) of the Government Code, a governmental body's failure to comply with the requirements of section 552.303(d) results in the legal presumption that the requested information is subject to required public disclosure and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.303(e); Open Records Decision No. 319 (1982). 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). Although you raise section 552.108(a)(1) of the Government Code as an exception to disclosure of the submitted incident report, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.303. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold any portion of the submitted incident report pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) excepts from public disclosure an internal record 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." Gov't Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). Like section 552.108(a)(1), a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement and crime prevention. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Pruitt*, 551 S.W.2d 706.

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution). You generally state that the submitted incident report is an internal record or notation maintained for internal use in matters relating to law enforcement. You have not explained, however, how or why release of the submitted incident report would interfere with law enforcement or crime prevention. We therefore conclude that the department may not withhold any part of the submitted incident report under section 552.108(b)(1) of the Government Code.

We note that portions of the submitted incident report are protected by section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.<sup>1</sup> Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 does not apply to out-of-state motor vehicle record information. We have marked Texas motor vehicle record information in the submitted incident report that must be withheld under section 552.130 of the Government Code. The remaining information must be released.

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

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

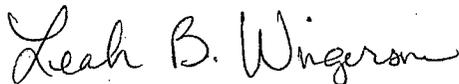
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 318743

Enc. Submitted documents

c: Mr. Victor Galvan  
4955 South Jackson Road  
Edinburg, Texas 78539  
(w/o enclosures)