



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2008

Ms. Monica Ogilvie  
Assistant Attorney General  
Public Information Coordinator's Office  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2008-17427

Dear Ms. Ogilvie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 331250 (PIR No. 08-023520).

The Office of the Attorney General (the "OAG") received a request for information concerning a certain crime victim's compensation claim. You assert the police report is excepted from disclosure under section 552.108 of the Government Code. To the extent the rest of the requested information exists, we assume you have released it. *See Gov't Code* §§ 552.301, .302. We have considered your claimed exception and have reviewed the information at issue.

First, the OAG acknowledges it failed to comply with section 552.301(b) by its untimely submission of a request for a decision from this office. *Id.* § 552.301(b) (governmental body must ask for decision from this office and state exceptions that apply not later than tenth business day after date of receiving written request). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). In Open Records Decision No. 586 (1991), we concluded the need of a governmental body

to withhold information from disclosure under section 552.108, other than the one that failed to timely comply with the requirements for requesting an attorney general decision, may be a compelling reason to overcome the presumption that the information is public.

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). 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.

You explain that for purposes of processing the victim's claim file, the Crime Victim Services Division of the OAG sought and received the submitted offense report from the Houston Police Department (the "department"). *See* Crim. Proc. Code art. 56.38 (stating that, upon request, law enforcement entity must release all reports to OAG for purpose of determining crime victim's compensation claim). The OAG informed the department of the request, and the department asks that the information be withheld from disclosure so as not to interfere with an ongoing criminal investigation. Based on the submitted arguments and our review of the information, we agree release of the report 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 the information pursuant to section 552.108(a)(1) of the Government Code. Because section 552.108 is dispositive, we do not address the OAG's other arguments.

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 331250

Enc: Submitted documents

c: 2 Requestors  
(w/o enclosures)