



December 27, 1999

Mr. Mark. A. Flowers
Assistant City Attorney
The City of Midland
300 N. Loraine, Room. 320
P.O. Box 1152
Midland, Texas 78702-1152

OR99-3764

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131314.

The City of Midland (the "city") received a request for offense report number 9907130057. You have provided for our review information that is responsive to the request. You assert the requested information is excepted from public disclosure under the informer's privilege and sections 552.108 and 552.130 of the Government Code. We have reviewed the information you have submitted and considered the exceptions you assert.

Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." You assert that the incident that is the subject of the report "did not result in a conviction or deferred adjudication." After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to the submitted information, and that most of the information contained in the report therefore may be withheld. We note, however, that information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976).

You acknowledge that basic front page report information is public in stating that because section 552.108 “does not except from disclosure basic information, please see Exhibit ‘D’, which already has been released to the requestor.” However, our review of exhibit “D” indicates you have withheld the identification and description of the complainant from the offense report. Such information is basic front page information that is not excepted from disclosure. *See* Open Records Decision No. 127 at 4 (1976) (front page offense report information includes the identification and description of a complainant). You also claim the informer’s privilege as to this information. The informer’s privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). Here, the informer’s privilege is inapplicable because the submitted information indicates the subject of the information already knows the identity of the complainant with respect to the incident. As this information may not be withheld under section 552.108, and because the informer’s privilege is inapplicable, you must disclose the identification and description of the complainant.

Because we make a determination under section 552.108, we do not address your additional arguments against disclosure. 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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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).

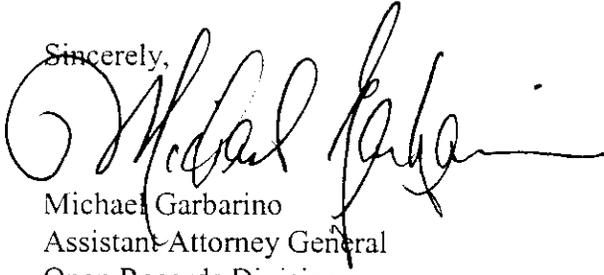
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is written in a cursive style with a large initial "M".

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131314

Encl. Submitted documents

cc: Mr. Julian J. Rubio
4500 West Illinois, Suite 114
Midland, Texas 79703
(w/o enclosures)