



December 28, 1999

Mr. Ric Gonzalez
Neiman & Barnes, L.L.P.
P.O. Box 777
Lewisville, Texas 75067

OR99-3803

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130854.

The City of Lewisville Police Department (the "department"), which you represent, received a request for information related to a specified police report. You indicate that you have released "front page" information as required by *Houston Chronicle Publishing 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) and delineated by this office in Open Records Decision No. 216 (1978). You have provided the responsive information to this office for review, marked to indicate that portion you seek to withhold. You assert that the information at issue is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. If such interference is not apparent on the face of the submitted information, a governmental body claiming this exception must explain, how release of the information will interfere with detection, investigation, or prosecution of crime. We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. 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); Open Records Decision No. 216 (1978). Thus, in the future, you should explain to this office the current status of the cases (e.g. pending, ongoing, finally concluded, dismissed, acquitted). Where the submitted information shows on its face that it relates to an investigation of a criminal incident in which the limitations period barring prosecution has not lapsed, we will generally consider the information to relate to an ongoing investigation or prosecution, and thus, to be excepted from public disclosure by section 552.108(a)(1). In this case, the criminal incident occurred on October 3, 1999. The limitations period for misdemeanor charges is two years from the date of the commission of the offense. Code Crim. Proc. art. 12.02. For felony charges the limitation period is five years from the date of the commission of the offense of theft, burglary, or robbery, and three years from the date of the commission of the offense of most other felonies. Code Crim. Proc. art. 12.021. As no limitations period has lapsed regarding the subject incident, we conclude that this case remains subject to prosecution. The responsive information which you have marked as “not released” may be withheld under section 552.108(a)(1) of the Government Code.

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.

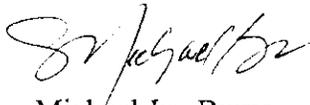
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID#130854

Encl: Submitted documents

cc: Mr. Gary N. Bell
902 Azalea Drive
Lewisville, Texas 75067
(w/o enclosures)