



June 23, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-2401

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136375.

The Texas Department of Criminal Justice (the “department”) received a request for “a copy of the internal affairs investigation report” pertaining to an investigation of the requestor. You have provided for our review information that is responsive to the request. You assert that the requested information is excepted from public disclosure under section 552.108 and 552.117 of the Government Code. We have reviewed the submitted information and considered the exception 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:

...

(2) 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[.]

The submitted information consists of a report with attachments which you represent resulted from an Internal Affairs investigation “that was conducted to determine whether an alleged falsification of state documents warranted criminal charges.” You seek to withhold the report because the “investigation has been closed with a determination that neither further

investigation nor recommendations for prosecution will be made.” Based on these representations, we believe you have established that the matter has come to a conclusion that did not result in a conviction or deferred adjudication for purposes of section 552.108(a)(2). Accordingly, except as noted below, we determine that you may withhold the information in its entirety.

Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *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).

Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of an offense report. Gov’t Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 187; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information held to be public in *Houston Chronicle*).

In summary, you may withhold the submitted information in its entirety pursuant to section 552.108(a)(2), except you must release the type of information that is considered to be front page offense report information.

Because we make a determination under section 552.108(a)(2), we do not address your other 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).

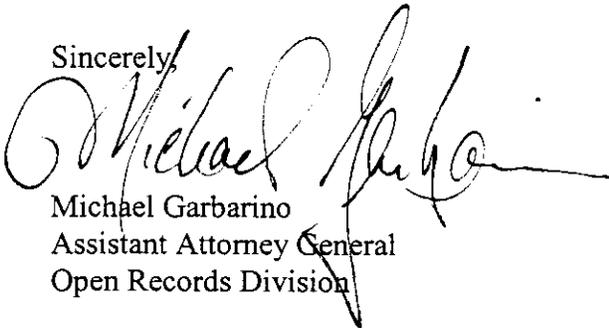
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

Ref: ID# 136375

Encl. Submitted documents

cc: Ms. Janet M. Raeke
10503 Berthound
Austin, Texas 78758
(w/enclosures)