



March 21, 2001

Ms. Myrna S. Reingold
Legal Department
Galveston County
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2001-1116

Dear Mr. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145146.

The Galveston County Sheriff's Department (the "department") received a request for "any statements or recordings of [the requestor's client's] version of" an incident of alleged excessive use of force by a deputy. You state that you have released some of the requested information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that you seek to withhold a variety of records relating to the alleged incident of excessive use of force. We note, however, that the requestor only seeks the statements or recordings of his client's version of events. Therefore, we find that the only responsive information submitted to this office for review is the video tape of the alleged incident. The remainder of the information you seek to withhold is not responsive to the request and therefore need not be released to the requestor.

We next note that the video tape is incorporated as evidence in a completed internal affairs report. Section 552.022 of the Government Code provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). Because the video tape is part of a completed report, it may only be withheld if it is confidential under other law or if it is excepted under section 552.108 of the Government Code. Furthermore, section 552.103 of the Government Code is not other law for purposes of section 552.022.

On the other hand, the department is required to withhold information made confidential by section 552.119 of the Government Code, which excepts from public disclosure a photograph of a peace officer¹ that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The video tape in question appears to include the images of several department deputies. It does not appear that any of the exceptions to section 552.119 apply. Furthermore, you have not informed us that any of the deputies depicted in the video executed a written consent to disclosure of their pictures. Therefore, under section 552.119 of the Government Code, the department must withhold any portion of the video tape that includes the image of a peace officer. The remainder of the video tape, however, is not protected under section 552.119.

We will address your section 552.108 argument with respect to the portions of the video tape that are not protected under section 552.119 of the Government Code. 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 the requirements of Section 552.021 if:

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

(B) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information in question relates to a potential criminal case and a pending investigation and the release of the information would interfere with law enforcement or prosecution. However, after reviewing the submitted information and your arguments, we find that you have not adequately demonstrated how the release of the remaining portions of the video tape would interfere with any criminal investigation or prosecution. Therefore, the portions of the video tape that are not excepted under section 552.119 of the Government Code are likewise not excepted under section 552.108 of the Government Code. Consequently, the department must release those portions of the video tape to the requestor.

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).

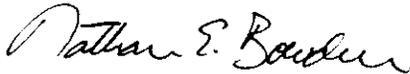
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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 General Services Commission 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145146

Encl: Submitted documents

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(w/o enclosures)