



April 5, 2001

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2001-1374

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145733.

The City of El Paso (the “city”) received a request for a copy of the city’s investigation regarding a complaint filed against three specified police officers as well as a letter written by representatives from the Mexican Consulate. You state that you have released a copy of the letter from the Mexican Consulate. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have submitted a copy of the criminal investigatory case in Exhibit B and the Internal Affairs administrative investigatory case in Exhibit C. 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. Generally, a governmental body claiming an exception under 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), (b), .301; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You contend that both pending investigations cover the same factual information and circumstances. You explain that the criminal investigation has been presented to the District Attorney’s Office and the administrative investigation is on-going.

Based on your representations and our review of the submitted information, we conclude that the administrative investigation relates to the criminal investigation and, therefore, release of the submitted information would 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). *But see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.—El Paso 1992, writ denied) (section 552.108 only applies to criminal investigations). Therefore, we conclude that the city may withhold Exhibits B and C under section 552.108(a)(1) of the Government Code.<sup>1</sup> You state that the city has already released copies of the incident reports in order to comply with section 552.108(c). You have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim that Exhibit D contains medical records which are excepted under section 552.101 in conjunction with section 159.002 of the Occupations Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by statute. Section 159.002(b), the Medical Practice Act (“MPA”), provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Thus, access to medical records is governed by provisions outside the Public Information Act. *See Open Records Decision No. 598 (1991)*. The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. *Open Records Decision No. 598 (1991)*. Therefore, you must withhold the information in Exhibit D under section 552.101 and the MPA.

In conclusion, you may withhold Exhibits B and C under section 552.108(a)(1) of the Government Code. Further, you must withhold the submitted information in Exhibit D under section 552.101 in conjunction with the MPA.

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

*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).

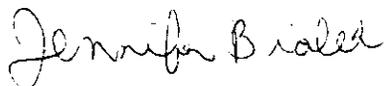
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 145733

Encl: Submitted documents

cc: Ms. Christina Brown  
*KTSM-TV*  
801 North Oregon St.  
El Paso, Texas 79902  
(w/o enclosures)