



February 4, 2002

Lieutenant Javier Gonzalez  
Record Division  
City of Pharr Police Department  
202 East Clark  
Pharr, Texas 78577

OR2002-0518

Dear Lt. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158790.

The City of Pharr Police Department (the "department") received a request for copies of documents pertaining to three case numbers. You state that you have released some responsive information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). However, the department did not provide us with case number 00-4789 within fifteen days of receiving the request for information.<sup>1</sup>

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<sup>1</sup> Although the request for information states that case # 00-4789 will be released, you claim that all of the requested information, with the exception of "front page" information, is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. Accordingly, we treat your request for decision as a request concerning all of the requested information.

When a governmental body fails to submit responsive information to us for review that it wishes to withhold from disclosure, the information at issue is presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some source of law that makes the information confidential or a demonstration that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The department claims that case number 00-4789 is excepted from disclosure pursuant to section 552.108 of the Government Code. However, we conclude that the department has not demonstrated a compelling reason under section 552.108 to withhold the requested case number from disclosure. *See* Open Records Decision No. 586 (1991) (stating that need of governmental body, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Furthermore, because the department did not submit a copy of this case number for our review, we have no basis for concluding that it is otherwise confidential by law. Accordingly, we conclude that the department must release all information that it holds that is responsive to the request for case number 00-4789.

Section 552.108(a)(1) of the Government Code provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why 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 cases associated with the submitted information are still assigned to a department investigator and that the release of the submitted information would interfere with the department's ability to properly investigate and/or prosecute the criminal activity involved in the records. We, thus, understand you to argue that the cases associated with the submitted information are pending. Based on our review of your arguments and the submitted information, we conclude that the release of the information would interfere with the detection, investigation, or prosecution of crime.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company 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). Generally, the identity of a complainant must be released as basic information. However, information tending to identify alleged victims of sexual assault is excepted from disclosure pursuant to section 552.101 of the Government

Code in conjunction with the common-law right to privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Accordingly, the department must withhold from disclosure the identifying information of the alleged sexual assault victim that we have marked, but must release all other basic information to the requestor. 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); see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). However, the department may withhold the remaining information from disclosure pursuant to 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).

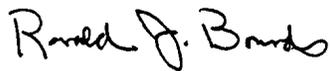
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 Texas Building and Procurement 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 158790

Enc. Marked documents

c: M. Charles Scholwinski  
Investigative Options  
6565 West Loop South  
Bellaire, Texas 77401  
(w/o enclosures)