



July 24, 2002

Ms. Ruth Reyes
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-4067

Dear Ms. Reyes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166136.

The City of El Paso (the "city") received a request for records held by the El Paso Police Department (the "department"). You state that the city has released to the requestor a redacted copy of the complaint report and a redacted copy of page 5 of the supplement report, and pages 1, 7, 8, 10, and 11 of the supplement report in their entirety. Although you do not raise any particular subsection, you claim that the name of the complainant, reference-01, and witnesses' names are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We understand you to base your argument on section 552.108(a)(1).¹ Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime. . . .

¹Because you state the arrestees in the case were placed on deferred adjudication, we cannot conclude that section 552.108(a)(2) or (b)(2) applies to the submitted information.

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).

Citing Open Records Decision Nos. 297 (1981) and 628 (1994) as authority, you contend the name of the complainant, reference-01, and witnesses' names are excepted from public disclosure pursuant to section 552.108 of the Government Code because you argue that the release of the identities of these individuals might either subject them to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

In Open Records Decision No. 628 (1994), this office discussed the circumstances under which the identity of a complainant may be withheld from the public under section 552.108. In that decision, we determined that evidence of harassment or retaliation would be sufficient proof of undue interference with law enforcement even in cases where the victim is identified as the complainant, regardless of whether the case is active or closed. The discussion goes on to state that

in cases involving gang violence, a law enforcement agency may wish to withhold the complainant's identity for fear of gang retaliation. If a law enforcement agency explains to this office that gang retaliation may occur, the complainant's name may be withheld because release of the information would unduly interfere with law enforcement.

See Open Records Decision No. 628 at 2 (1994).

In this instance, the complainant to the graffiti crime is identified as such in the police report, and it appears the accused individual is fully aware of the fact that the complainant notified the police and provided the police with details of the offense. Moreover, it appears that the accused individual is aware that reference-01 is the mother of the complainant. Consequently, we fail to recognize how the release of this information in this particular instance would interfere with future law-enforcement efforts. The city therefore must release information pertaining to the complainant and reference-01 from the police report. Additionally, we note that some of the witnesses whose names you have redacted are police officers. The decisions you have cited do not extend protection to police officers. See Open Records Decision Nos. 297 (1981), 628 (1994). Accordingly, we do not think that release of the officers' names would interfere with law enforcement or prosecution.

However, one of the witnesses whose name you have redacted does not appear to be known to the requestor. We agree that release of this witness's identifying information, which we have marked, would unduly interfere with law enforcement. Accordingly, you may withhold the witness's marked identifying information under section 552.108(a)(1).

In summary, because it appears that the accused individual is aware that the complainant notified the police and provided them details of the offense, and because the accused individual is aware that reference-01 is the mother of the complainant, the city must release to the requestor the information pertaining to these two individuals. The city must also release to the requestor information pertaining to police officers. However, the city must withhold from disclosure the identifying information we have marked relating to a witness to the original offense.

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).

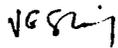
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 166136

Enc: Submitted documents

c: Mr. Jose Mendez
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El Paso, Texas 79912
(w/o enclosures)