



September 24, 2002

Lieutenant Arturo Valdez
Central Record Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78502-0220

OR2002-5378

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168408.

The McAllen Police Department (the "department") received two requests for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that subsection 552.301(b) provides that a governmental body must ask for the attorney general's decision and state the exceptions that apply not later than the 10th business day after the date of receiving a written request for information. *See Gov't Code* § 552.301. In this instance, the department received the initial request for information on July 3, 2002. However, you did not raise section 552.108 as an exception from disclosure until August 21, 2002. Consequently, you failed to properly raise section 552.108 within the ten business day period mandated by section 552.301(a) of the Government Code. Thus, the department has waived its section 552.108 claim for this information. However, in Open Records Decision No. 586 (1991), we concluded that the need of a governmental body, other than the one that has failed to timely comply with the requirements for requesting an attorney general decision under the Public Information Act, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. The U.S. Department of Justice Drug Enforcement Administration (the "DEA") has submitted a letter to this office contending that it has a law enforcement interest in the information at issue and that the information should be withheld under section 552.108. Therefore, we will address the DEA's argument under section 552.108. *See* ORD 586 at 3.

Section 552.108, the "law enforcement exception," 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The DEA contends that the requested information relates to a confidential source currently utilized by the DEA and that this source is an integral part of an ongoing and sensitive investigation. Further, the DEA states that the release of the submitted information could compromise the investigation. Based on these representations and our review of the information in question, we find that release of the submitted information would interfere with the investigation efforts of the DEA. *See* Gov’t Code § 552.108(a)(1); *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); Open Records Decision No. 586 at 3 (addressing statutory predecessor to section 552.108); Open Records Decision No. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of related information). Consequently, the department may withhold the submitted information in its entirety under section 552.108(a)(1) of the Government Code. As we are able to make this determination, we need not address the department’s argument under section 552.101 of the Government Code which was timely submitted to this office.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 168408

Enc: Submitted documents

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