



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 4, 2003

Mr. Ricardo Gonzalez  
City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540

OR2003-2277

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178954.

The City of Edinburg and the Edinburg Police Department (collectively, the "city"), which you represent, received six written requests for information related to the murders of six individuals on January 5, 2003.<sup>1</sup> You advise that some of the requested information has been released. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code.<sup>2</sup> We have considered the exception you claim and have reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.108 provides in pertinent part:

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<sup>1</sup> You inform us that the city also received a verbal request for "[a]ffidavit and murder warrants." Because the provisions of the Public Information Act are triggered only by the governmental body's receipt of a written request for information, *see* Gov't Code § 552.301(a), (b), we do not address here the extent to which this information is subject to required public disclosure.

<sup>2</sup> We note that while you claim that some information is excepted under section 552.301(e)(1)(D), section 552.301 is not an exception to disclosure under the Public Information Act. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested, or representative sample if voluminous amount of information was requested). Furthermore, the administrative inconvenience of providing public records to a requestor in response to an open records request does not constitute sufficient grounds for denying such a request. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

<sup>3</sup> We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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 [required public disclosure] if:

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

Gov't Code § 552.108(a)(1), (b)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *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). You indicate that the requested information pertains to an open investigation, and argue that release of the information would compromise the investigation, detection, and possible prosecution of crime. Based on your representations, we conclude that the release of the information "would interfere with the detection, investigation, or prosecution of crime." 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. 216 at 3 (1978).

Section 552.108 does not, however, except from disclosure "basic information about an arrested person, an arrest, or a crime." 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). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the information relating to the pending investigation under section 552.108(a)(1).

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 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 178954

Enc. Submitted documents

c: Ms. Mary Moreno  
The Monitor  
1101 Ash Ave.  
McAllen, Texas 78501  
(w/o enclosures)

Mr. Beng L. Lim  
The Edinburg Daily Review  
215 East University Drive  
Edinburg, Texas 75839  
(w/o enclosures)

Ms. Lynn Brezosky  
Associated Press  
4851 LBJ Freeway, Suite 300  
Dallas, Texas 75244-6017  
(w/o enclosures)

Ms. Jessie Degollado  
KSAT-12 News, San Antonio  
P.O. Box 2478  
San Antonio, Texas 78298  
(w/o enclosures)