



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 24, 2003

Sergeant David D. Infante  
Custodian of Records  
Brownsville Police Department  
600 East Jackson Street  
Brownsville, Texas 78520

OR2003-2746

Dear Sgt. Infante:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179955.

The City of Brownsville Police Department (the "department") received a request for public information. You state that the responsive documents represent current active cases against an individual for harassment, stalking, and violating a protective order. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not provide this office with a copy of the written request for information. Thus the department failed to comply with section 552.301(3).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.

App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The need of another governmental body to withhold information can provide a compelling reason for nondisclosure under section 552.108 and overcome the presumption of openness that would arise under section 552.302 of the Government Code. Open Records Decision No. 586 (1991).

Next, we note that the submitted materials contain executed arrest warrants that have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, as prescribed by section 552.022, these public court documents must be released to the requestor unless they are confidential under other law. Section 552.108 is a discretionary exception under the Public Information Act and is therefore not "other law" that makes information confidential. See Open Records Decision No. 586 (1991) (governmental body may waive section 552.108). Therefore, we have marked for release the documents that are subject to section 552.022.

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. You state that the requested documents are part of a criminal investigation conducted by the department. You also state that the requested documents have been submitted to the Cameron County District Attorney's Office for eventual prosecution. You assert that release of the requested documents would interfere with the prosecution of this case. You also indicate that the Cameron County District Attorney's office (the "D.A.") requested that the submitted documents be withheld and you submitted a letter from the D.A. stating that release of the requested documents would hinder the prosecution of the offenses. Based on these representations and our review of the submitted information, we agree that you have demonstrated that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Therefore, with the exception of the documents we have marked for release under section 552.022, the department may withhold the requested information 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 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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 179955

Enc: Submitted documents

c: Mr. Reynolds G. Garza, Jr.  
680 East St. Charles, Suite 300  
Brownsville, Texas 78522-2025  
(w/o enclosures)