



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 11, 2003

Ms. Paige Harbison Saenz
Barney Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2003-4805

Dear Ms. Saenz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184031.

The City of Manor (the "city"), which you represent, received a request from a former officer of the Manor Police Department for information relating to complaints made against the former officer, videotapes relating to the review of a complaint made in January, 2003, and a copy of the city's official policy on the handling, investigation, and disposition of formal and informal complaints against city employees. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We begin by noting your statement that the responsive information, other than the videotapes that you have submitted for review, "is not the subject of this request for opinion." We understand you to represent that the city does not intend to claim that the requested

¹ We note your contention that responding to the present request would require the city to create new information. The Public Information Act (the "Act") generally does not require a governmental body to create or prepare new information in response to a request. Open Records Decision Nos. 572 (1990), 342 (1982). Thus, the city is not required to create new information in response to the present request. However, the Act does require a governmental body to make a good faith effort to relate a request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (administrative inconvenience of providing public records is not grounds for refusal to comply with statutory mandates of predecessor to Act). Here, you indicate that the city is able to relate the request for videotapes pertaining to the January, 2003 complaint to the videotapes of traffic stops conducted by the former officer which you have submitted for review.

information, apart from the submitted videotapes, is excepted from disclosure pursuant to an exception under the Public Information Act. We therefore assume that the city has released the information, with the exception of the submitted videotapes, to the requestor. If not, the city must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

With respect to the submitted videotapes, we address your claim under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(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;

(2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

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 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. This office has recognized that in certain circumstances, a governmental body may withhold information pursuant to

section 552.108 of the Government Code on behalf of another governmental body. We find that such circumstances exist here. Where an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108(a)(1) may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under statutory predecessor to section 552.108). Furthermore, this office has determined that a governmental body may withhold information pursuant to section 552.108(a)(1) if the information reveals possible criminal conduct that the governmental body intends to forward or has forwarded to a law enforcement agency or prosecutor. Attorney General Opinion MW-575 (1982); Open Records Decision No. 493 (1988).

In this case, you state that the Travis County District Attorney's Office has reviewed the submitted videotapes and intends to seek an indictment against the requestor.² You further state that the Travis County District Attorney's Office has requested the original videotapes as evidence in the pending case against the officer. Based on your representations and our review of the submitted videotapes, we find that release of the videotapes would interfere with the detection, investigation, or prosecution of crime. *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) (court delineates law enforcement interests that are present in active cases). We therefore conclude that the city may withhold the submitted videotapes from disclosure as a proper custodian of the videotapes based on section 552.108(a)(1) of the Government Code. *See* Open Records Decision Nos. 474 (1987), 372 (1983). Based on this finding, we do not reach your other arguments against disclosure.

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.*

²In letters dated May 21, 2003 and June 20, 2003, the attorney for the requestor disputes the city's statement that an indictment is currently pending against the officer. Because this office cannot resolve disputes of fact in the open records process, we must rely on the representations of the city that the submitted videotapes relate to a pending criminal prosecution against the requestor. *See* Open Records Decision Nos. 554 (1990), 552 (1990).

§ 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 184031

Enc: Submitted documents

c: Mr. William McCaughey
1536 County Road 201
Paige, Texas 78659
(w/o enclosures)

Mr. Steven W. Keng
Attorney at Law
P.O. Box 758
Giddings, Texas 78942
(w/o enclosures)