OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 31, 2003

Mr. James J. Bayne, Jr.
Interim City Attorney
City of Del Rio
109 West Broadway
Del Rio, Texas 78840-5527

OR2003-5277

Dear Mr. Bayne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185182.

The City of Del Rio (the "city") received a request for a specified employment application and information pertaining to the testimonies given by city employees which led to the requestor's resignation. You indicate that the city has no objection to releasing some responsive information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.108(a)(1) provides that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [disclosure] if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). We note that a governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the submitted information consists of statements from several city employees that were handed over to the city's Chief of Police for investigation of a possible crime or crimes committed by the requestor. You also indicate that a criminal investigation was subsequently conducted and is still in progress at this time. Based on our review of your representations and the submitted information, we find that the release of the information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that the city may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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); *see also* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation, section 552.108 may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor).

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).

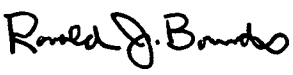
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 185182

Enc. Submitted documents

c: Mr. Eloy Tijerina
607 Cantu Street
Del Rio, Texas 78840
(w/o enclosures)