



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2003

Ms. Karen Rabon  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2003-6217

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187138.

The Office of the Attorney General (the "OAG") received a request for a copy of a specific police report. You claim that the requested offense report is excepted from disclosure under section 552.108 of the Government Code.

The OAG acknowledges, and we agree, that it failed to seek an open records decision from this office within the statutory ten business day period. *See* Gov't Code § 552.301. The OAG's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption of openness, the OAG must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). In this instance, you assert that the release of the requested information will affect the law enforcement interests of another governmental body. In Open Records Decision No. 586 (1991), this office concluded that the need of another governmental body to withhold information under section 552.108 may provide a compelling reason for nondisclosure when the governmental body that received the request failed to timely seek an open records decision under section 552.301 of the Government Code. We will, therefore, address the submitted 552.108 arguments.

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. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See Open Records Decision Nos. 474 (1987), 372 (1983).*

You explain that the Crime Victims' Compensation Division of the OAG received an application seeking crime victim's compensation benefits for this crime. You further explain that for purposes of processing the victim's claim file, the OAG sought and received the requested offense report from the Corpus Christi Police Department (the "department"). You indicate that the offense report pertains to a pending case being investigated by the department. You have also submitted a letter from the department asking that the offense report be withheld from disclosure so as not to interfere with the ongoing criminal investigation. Based on these representations and our review of the submitted information, we agree that the release of the offense report 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). Accordingly, the OAG may withhold the responsive offense report 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 187138

Enc: Submitted documents

c: Mr. Thomas J. Henry  
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(w/o enclosures)