



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

September 26, 2003

Lieutenant Arturo Valdez  
Central Records Division  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2003-6789

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188393.

The McAllen Police Department (the "department") received a request for two specified offense reports. You claim that the requested information is excepted from disclosure under sections 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain 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).

You state that report number 99-009950 relates to an ongoing investigation and that its release would interfere with the detection, investigation, or prosecution of this matter. We note, however, that this report involves an allegation of interference with child custody that occurred on March 24, 1999. The longest possible statute of limitations for the offense described in this report is three years. *See* Crim. Proc. Code art. 12.01(6) (providing limitation period of three years for any felony offense not listed in subsections one through five); Penal Code § 25.03(d) (providing that interference with child custody is a state jail felony offense). More than three years elapsed between March 24, 1999, and the date you

received this request for information. You do not inform this office that any criminal charges were filed within the limitations period. You have not otherwise explained how or why release of this information would interfere with the investigation of an offense for which the statute of limitations has run. Thus, because you have not shown the applicability of section 552.108(a)(1), we conclude that you may not withhold report number 99-009950 on this basis.

However, report number 99-009950 includes information protected by section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a driver's license issued by an agency of this state. Thus, the department must withhold the marked portion of report number 99-009950 under section 552.130. The rest of the report must be released.

You also state that report number 03-024400 relates to an ongoing investigation. Based upon this representation, we conclude that the release of the information 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).

However, section 552.108 is inapplicable to 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 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), which includes a detailed description of the offense. Since you state that the department has released the basic information to the requestor, we conclude that you may withhold the submitted information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of report number 03-024400 that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, pursuant to section 552.108(a)(1), the department may withhold report number 03-024400 with the exception of basic information. The department must withhold the marked portion of report number 99-009950 under section 552.130. The remaining information must be released.

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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 188393

Enc. Submitted documents

c: Mr. Raymond H. Rodriguez, Jr.  
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(w/o enclosures)