



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 4, 2003

Ms. Dianne Eagleton  
Manager, Records Division  
North Richland Hills Police Department  
P.O. Box 820609  
North Richland Hills, Texas 76182-0609

OR2003-8707

Dear Ms. Eagleton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192104.

The North Richland Hills Police Department (the "department") received a request for any information related to "Calls for Service or warrant executions, arrests, or other placements into custody" at a specified location for the month of August, 2003, including documentation or logs of any materials "entered into evidence or into the [department's] property room." 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.

You contend that the identity of an undercover officer, the contents of the submitted case file, and related information are excepted from disclosure under section 552.108. Section 552.108(a) of the Government Code 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 the submitted information relates to a pending criminal investigation and prosecution. Based on your representations and our review of the submitted information, we conclude that section 552.108(a)(1) is applicable to report numbers 030008729 and 030008730 and the submitted audio and video tapes. *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*. See Open Records Decision No. 127 (1976) (listing basic information that must be released from offense report in accordance with *Houston Chronicle*). You contend that the release of the name of the undercover officer would interfere with the pending criminal investigation and prosecution. However, the names of all investigating officers are basic information subject to disclosure under section 552.108(c). *Id.* Thus, with the exception of the basic offense and arrest information which includes the names of all investigating officers, the department may withhold report numbers 030008729 and 030008730 and the submitted audio and video tapes from disclosure based on section 552.108. We note that you have the discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

Next, we note that the remaining submitted information concerns an internal affairs investigation. Section 552.108 is inapplicable where a complaint against a law enforcement officer does not result in a criminal investigation or prosecution. *Morales v. Ellen*, 840 S.W.2d 519, 525-526 (Tex. App.—El Paso 1992, writ denied) (construing statutory predecessor); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation). In this case, the remaining submitted information relates to an internal affairs investigation of violations of departmental policy, rather than to a criminal investigation. Investigations into non-criminal matters are not excepted from disclosure by section 552.108 of the Government Code. *Morales v. Ellen*, 840 S.W.2d at 526 (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). Because the remaining submitted information does not relate to a criminal investigation, we find that the remaining submitted information is not excepted from disclosure under section 552.108, and it must be released.

In summary, we conclude that, with the exception of the basic offense and arrest information which includes the names of all investigating officers, the department may withhold report numbers 030008729 and 030008730 and the submitted audio and video tapes based on section 552.108(a)(1) of the Government Code. All remaining submitted 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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 192104

Enc: Submitted documents

c: Mr. Jamshyd "Jim" Zadeh  
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(w/o enclosures)