ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2004

Mr. Brendan Hall
City Attorney
City of Harlingen
P. O. Box 2207
Harlingen, Texas 78551

OR2004-1748

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197590.

The Harlingen Police Department (the "department") received a request for four categories of information pertaining to a specified criminal investigation. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108(a)(1) of the Government Code provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the case associated with the submitted information constitutes an ongoing criminal case. Based on your representations and our review of the submitted information, we find that section 552.108(a)(1) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made

available to public, including detailed description of offense). Accordingly, with the exception of basic information that must be released, we conclude that the department may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.[1]

However, we note that if the department has previously voluntarily released any portion of the information at issue to the public, it may not now withhold such information under either section 552.103 or section 552.108 of the Government Code. *See* Gov't Code §552.007 (prohibiting selective disclosure of information); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.–Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 490 (1988), 463 (1987) (if governmental body voluntarily releases information to one member of public, Public Information Act's (the "Act") exceptions to disclosure are waived, unless information is deemed confidential), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). We note in this regard that a portion of the information at issue, which we have marked, must be withheld pursuant to section 552.130 of the Government Code, regardless of any previous release by the department to the public. *See* Gov't Code §§ 552.007, .130 (excepting in part information from disclosure relating to motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state), .352 (imposing criminal penalties for release of confidential information); *see also* Open Records Decision No. 400 (1983) (while governmental body may waive right to claim permissive exceptions to disclosure under Act by selectively disclosing information, it is prohibited from disclosing information made confidential by law).

In summary, with the exception of basic information that must be released to the requestor, the department may generally withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. However, the department must release any information that has previously been voluntarily released by the department to the public, other than the information that we have marked pursuant to section 552.130 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

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[1] Because we generally base our ruling on section 552.108(a)(1) of the Government Code, we need not address your remaining claim with regard to the submitted information, except to note that "basic information" may not generally be withheld under section 552.103 of the Government Code. *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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).

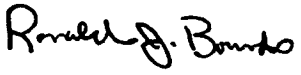
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 197590

Enc. Marked documents

c: Mr. Carlos H. Cisneros
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(w/o enclosures)