ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2004

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

OR2004-10203

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# 214316.

The City of Harlingen (the "city") received a request for a specified complaint and information related to that complaint. You state that the city has made some of the requested information available to the requestor. You claim 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) 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." Gov't Code § 552.108(a)(1). 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 id.* §§ 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 pertains to an ongoing investigation that may lead to issuance of a citation or citations for alleged violations of city ordinances and that violations of these ordinances carry monetary fines as penalties. You also state that, if these citations are issued, the violations will be prosecuted by the city attorney's office in municipal court. You do not inform us, however, whether the entity that holds the records at issue and that is conducting this investigation is a law enforcement agency. Nevertheless,

we note that an agency that is not a law enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and will be forwarded to an appropriate law enforcement agency for investigation. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision Nos. 493 (1988), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident). Based on your representations and our review of the submitted information, we agree that the release of the information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we find that section 552.108(a)(1) applies to the submitted information.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. *See* Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, to included detailed description of offense). Accordingly, we conclude that, with the exception of basic information that must be released to the requestor, the city may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the city maintains the discretion to release all or part of the information that does not constitute basic information which is not otherwise confidential by law. *See* Gov't Code § 552.007.

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

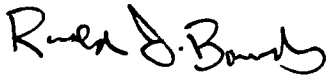
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may 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/krl

Ref: ID# 214316

Enc. Submitted document

c: Ms. Lupita Ramirez
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Harlingen, Texas 78550
(w/o enclosures)