



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2006-01909

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 242164.

The San Antonio Police Department (the "department") received a request for the voluntary statements of two named defendants. 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304.

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." *Id.* § 552.108(a)(1). 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). Generally, this office will presume such interference when *previously unreleased* information relates to a pending criminal prosecution under section 552.108(a)(1). *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) (governmental body has legitimate interest in preserving the secrecy of its records from defendants and their counsel in criminal actions).

In this instance, you state that the submitted information relates to a pending criminal prosecution being handled by the Bexar County District Attorney's Office (the "district attorney's office"). See Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). However, the requestor asserts that he has previously reviewed the submitted information. On January 24, 2006, we sought a representation from the district attorney's office that the submitted information had not been released to the requestor. See Gov't Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). In response, the district attorney's office states that it has provided the defendants' counsel with copies of the submitted information, and that the defendants' counsel may have provided the requestor with access to the information. See *Brady v. Maryland*, 373 U.S. 83 (1963) (holding State has affirmative duty to disclose favorable and material evidence to defense). Because the district attorney had provided copies of the submitted information to defendants' counsel, we asked the district attorney's office to explain how the release of the submitted information to the current requestor would now interfere with the pending prosecution. In response, the district attorney's office generally asserts that release of the submitted information to this requestor "would create a dangerous precedent of entitlement to" such information.¹ We note, however, that the district attorney's office did not submit any arguments explaining *how* release of the submitted information to this requestor would interfere with the pending prosecution. Accordingly, we find that the district attorney has not established a law enforcement interest in the submitted information under section 552.108, and the department may not withhold the information on that basis. Because you raise no other exceptions to disclosure, the submitted information must be released to the requestor.

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

¹We note that the district attorney argues that "there is no entitlement by any party [] to receive copies of statements from witnesses." See Crim. Proc. Code art. 39.14. In this instance, however, the requestor is seeking the statements of two defendants. This ruling is limited to submitted information responsive to this request, and therefore does not address any other information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'JAP', written over a horizontal line.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 242164

Enc. Submitted documents

cc: Mr. Ed Schweninger
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