



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2008

Ms. Sandy Dudley
Records Coordinator
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR2008-00243

Dear Ms. Dudley:

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# 298924.

The Cleburne Police Department (the "department") received a request for a specified incident report. You claim that the submitted 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.

Section 552.108(a)(1) 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] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state that the submitted incident report pertains to a criminal case that is still under investigation. However, we note that this report relates to an alleged criminal mischief and an alleged burglary that occurred on July 2, 2001, and the longest possible statute of limitations for this report is five years. *See* Penal Code § 28.03(b)(2), (3) (criminal mischief causing pecuniary loss of \$50 or more but less than \$1,500 is misdemeanor); Crim. Proc. Code art. 12.01(4)(A) (limitations for theft, burglary, robbery is five years from date

of offense), 12.02 (misdemeanors subject to two year limitations period). Thus, the submitted incident report relates to alleged offenses for which the statutes of limitations have run. You have neither informed this office that any criminal charges were filed within the limitations period, nor have you explained how release of the information would interfere with the detection, investigation, or prosecution of the offenses for which the statutes of limitations have run. Therefore, the department has not established the applicability of section 552.108(a)(1) to the submitted incident report and it may not be withheld under section 552.108(a)(1).

We note that a portion of the submitted incident report is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure “information [that] relates to . . . a 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.” Gov’t Code § 552.130. Thus, the department must withhold the Texas motor-vehicle record information we have marked in the submitted incident report under section 552.130. Because you raise no other arguments against disclosure of the remaining information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

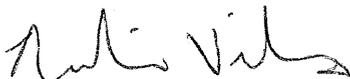
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 298924

Enc. Submitted documents

c: Mr. Robert Mark Hanna
1113 Sheridan Lane
Cleburne, Texas 76033
(w/o enclosures)