



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 27, 2009

Mr. Richard Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2009-10381

Dear Mr. Bilbie:

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# 350216.

The City of Harlingen (the "city") received a request for information pertaining to a specified January 5, 2009 shooting. You state the city has released basic information to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by U.S. Customs and Border Protection (the "agency"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Some of the documents at issue were created by the agency and provided to the city. Although these documents relate to an individual who was involved in the shooting, most of them do not relate to the specified shooting. Thus, because the requestor seeks information pertaining to the specified shooting, most of the agency documents are not responsive to this request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release these

documents, which we marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed). The agency Significant Incident Report, however, relates to the investigation into the specified shooting, and we consider it with the remaining information.

The city did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to “ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.” Gov’t Code § 552.301(b). While the city raised sections 552.101, 552.103, and 552.108 within the ten-business-day time period as required by subsection 552.301(b), the city did not raise section 552.111 until after the ten-business-day deadline had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.111 is generally a discretionary exception to disclosure which protects a governmental body’s interests and may be waived. *See* Open Records Decision No. 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). In failing to timely raise section 552.111, we find the city waived its claim under this exception, and none of the submitted information may be withheld under this exception.

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 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have provided a letter from the Cameron County District Attorney’s Office stating that the release of any information, other than basic information, pertaining to the investigation into the shooting would interfere with a pending criminal prosecution. *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). Based on this representation, we conclude that the release of the responsive information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ refused n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, you may withhold the responsive information under section 552.108(a)(1). As our ruling is dispositive, we need not address the remaining arguments against disclosure submitted by the city or the agency.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Davis", with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 350216

Enc. Submitted documents

cc: Requestor
(w/o enclosures)