



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. Patrick J. Fleming
Parker County Attorney
One Courthouse Square
Weatherford, Texas 76086

OR95-020

Dear Mr. Fleming:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28840.

The Parker County Attorney (the "county attorney") has received a request for information relating to an incident giving rise to a criminal prosecution on the charge of driving while intoxicated. Specifically, the requestor seeks information in the county attorney's possession relating to *State of Texas v. Gary Lewis Brazzell*, Cause No. CCL89-1611, including all investigation materials, statements, police reports, photographs, and videotapes. You do not object to releasing some of the requested information. You claim, however, that section 552.108 of the Government Code excepts the remainder of the requested information, which you have submitted to us for review, from required public disclosure.

At the outset, we address your assertion that you may withhold the submitted information under the attorney work product doctrine. The work product doctrine applies only upon a showing of the applicability of section 552.103(a) of the Government Code, which excepts from disclosure information relating to pending or reasonably anticipated litigation to which the governmental body is a party. *See* Open Records Decision No. 575 (1990). We understand that the criminal litigation to which the requested information relates has been concluded. A person injured during the incident has brought suit against a car manufacturer. The requestor here represents the defendant car manufacturer and seeks the requested information ostensibly in furtherance of his defense. You have not indicated, however, that the county is a party to this suit. You have not otherwise provided this office with information indicating that section 552.103(a) applies in this instance. Accordingly, we conclude that the county attorney may not withhold the requested information under the attorney work product doctrine.

You also claim that section 552.108 of the Government Code excepts the requested information from required public disclosure. Section 552.108 excepts from required public disclosure:

(a) [A] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ;
[and]

(b) [A]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally 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); Open Records Decision No. 127 (1976). Otherwise, section 552.108 excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the county has discontinued its investigation and prosecution of the matter at issue here and that the case is, therefore, closed. Moreover, you have not reasonably explained, nor does the submitted information supply an explanation on its face, how releasing the requested would unduly interfere with law enforcement. Accordingly, we conclude that the county attorney may not withhold the requested information under section 552.108 of the Government Code.

Finally, you object to releasing the requested information on the grounds that the requestor will use the information "to harass Joseph Watson in the civil case on cross examination." We note that a governmental body may not inquire into the purposes or motives underlying a request for information. Gov't Code § 552.222; *see also* Open Records Decision No. 628 (1994) (concluding that common-law privacy protects the identity of juvenile victims of a serious sexual offense, but not the juvenile victims of other offenses). Therefore, the county attorney may not withhold the requested information merely because the requestor may use it to prepare for cross-examination. The county attorney must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref: ID# 28840

Enclosures: Submitted documents

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(w/o enclosures)