



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 4, 1998

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR98-2943

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 120106.

The Travis County Sheriff's Office (the "Sheriff") received a request for a particular incident report. Although you acknowledge that you failed to ask for a decision from this office within the statutory ten-day deadline, you seek to withhold the requested report from the requestor based on sections 552.103 and 552.108 of the Government Code.

When a governmental body fails to raise discretionary exceptions to required public disclosure with the ten-day deadline of section 552.301 of the Government Code, the act provides that the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

You inform us that the requested information concerns prosecution pending in the Grand Jury Division of the Travis County District Attorney's Office. You state that the Sheriff invokes section 552.108 on behalf of the Travis County District Attorney's Office (the "District Attorney") and that the District Attorney's law enforcement interest in prosecuting the case provides a compelling reason to overcome the presumption of openness. You state that the District Attorney believes that "its prosecution efforts would be severely jeopardized if the requested Incident Report were released because the Incident Report,

including the witness statements made therein (and the circumstances in which they were made), will be of crucial importance in the Grand Jury trial of this action.” You also argue that the release of witness statements might subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation of witnesses with law enforcement officers.

The need of another governmental body, other than the body that has failed to timely seek an open records decision, may, in appropriated circumstances, provide a compelling reason to protect information from public disclosure based on section 552.108 of the Government Code. Open Records Decision No. 586 (1991). We believe you have presented an appropriate circumstance for the invocation of section 552.108 on behalf of another governmental body, in this case the District Attorney. *See id.*; *see also* Gov’t Code § 552.201(a) (each elected county officer is officer for public information). Section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Accordingly, the Sheriff may withhold all but the basic information about the offense based on section 552.108 of the Government Code. However, you assert section 552.103 applies to the basic information.

While section 552.103, the litigation exception, protects a broad category of information, *i.e.*, information that relates to pending or reasonably litigation, it does not apply to information the opposing party has seen. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Nor does it apply to front page offense report information. Open Records Decision Nos. 597 (1991), 362 (1983). Thus, the Sheriff may not withhold the front page offense information from the requestor based on section 552.103.

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

Ref.: ID# 120106

Enclosures: Submitted documents

cc: Ms. Pam Whited  
3102-B. Tallwell  
Del Valle, Texas 78617  
(w/o enclosures)