

January 25, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

OR99-0221

Mr. Jay Garrett
City Attorney
City of Greenville
2821 Washington
Greenville, Texas 75403-1049

Dear Mr. Garrett:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121308.

The City of Greenville (the "city") received a request for a police report. You assert that section 552.108 of the Government Code protects portions of the report at issue from disclosure. Section 552.108 is divided into subsections (a) and (b). Subsection (b) specifically concerns internal records of a law enforcement agency or prosecutor that are maintained for the agency or prosecutor's internal use in matters relating to law enforcement or prosecution. Subsection (a) is of broader scope, more generally concerning records held by a law enforcement agency or prosecutor that deal with the detection, investigation, or prosecution of crime. You do not indicate which subsection of section 552.108 is applicable, but as the request appears to cover information other than the police department's own internal records, we will address your arguments under subsection (a) of section 552.108.

Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). A governmental body may show that release of information would interfere with law enforcement by affirmatively stating to this office that the information at issue pertains to an ongoing criminal investigation or pending criminal case.

A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come

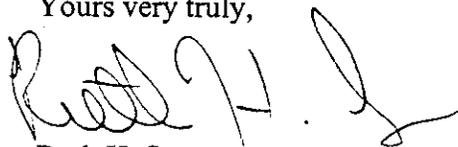
to some type of final result other than a conviction or deferred adjudication. A governmental body may show the applicability of section 552.108(a)(2) by affirmatively stating to this office that the criminal investigation or prosecution has concluded, but that the conclusion was a result other than conviction or deferred adjudication.

A governmental body asserting the applicability of section 552.108(a)(3) must demonstrate either that the records at issue were prepared by the prosecutor in anticipation of or in the course of preparing for criminal litigation, or that the records at issue actually reflect the mental impressions or legal reasoning of the prosecutor.

In your letter to this office, you state that release of the marked information could affect the prosecution of this case and that the information is not known to the suspects in the case. Assuming that there is an ongoing investigation and prosecution, we agree that you have shown that release of the marked information would interfere with the investigation or prosecution of crime. Open Records Decision No. 216 at 3 (1978) (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). We note, however, that in the future when you seek the protection of section 552.108(a)(1) you should clearly explain to this office when there is an ongoing investigation or pending prosecution. Failure to adequately brief this office concerning the applicability of an exception may result in the waiver of an asserted exception. Open Records Decision No. 363 (1983) (when governmental body fails to show how and why exception applies, attorney general has no basis on which to conclude information is excepted).

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 should 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,

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

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 121308

Enclosures: Submitted documents

cc: Mr. Gale Gene Ruse
6001 Colorado
Greenville, Texas 75402
(w/o enclosures)