



February 16, 1999

Mr. Frank Crull  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR99-0473

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122136.

The Texas Department of Public Safety (the department) received a request for the following information:

1. Texas Department of Public Safety Traffic Law Enforcement Division Policies and Procedures Manual;
2. A copy of the police report and all supplemental reports concerning the arrest of Ms. Anne Elizabeth Petty;
3. Any complaints filed against Trooper S. Vaughn Pack;
4. The final outcome of any complaints or any letters concerning the complaints against the trooper; and
5. Any information concerning alleged misconduct of the trooper; and nine specific types of information concerning the trooper.

You state that you have submitted to this office the information you seek to withhold. You also indicate that the submitted documents are a representative sample of the items requested.<sup>1</sup> You have, however, only submitted information concerning the arrested

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

individual and the arresting officer's offense report. You claim that this information is excepted from disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

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(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 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. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested information concerns a criminal investigation that is continuing and the prosecution is anticipated. You have shown that the release of the information concerning the arrest of the individual, request item number two, 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 ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)

(court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that the information requested in item two, which you have submitted to the office, may be withheld under section 552.108(a)(1).<sup>2</sup>

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g 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) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 187; *cf.* Open Records Decision No. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103).

We do not believe, however, that you have demonstrated how or why the information requested in items one, three, four, five, and six should be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 553 (1990), 413 (1984), 143 (1976), 127 (1976); *cf.* Open Records Decision Nos. 216 (1978), 133 (1976) (release of routine investigation procedures, techniques that are commonly known, and routine personnel information generally do not interfere with law enforcement and crime prevention). We do not believe that the exception applies to some of the documents which merely reveal information pertaining to the personnel matters of and an individual officer. Such information only indirectly "deals with the detection, investigation, or prosecution of crime" and more directly deals with personnel matters. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied) (where no criminal investigation or prosecution results from investigation of police officer for alleged misconduct, section 552.108 is inapplicable); Open Records Decision No. 350 (1982); Open Records Letter No. 96-1329 (1996).

Furthermore, you have not established that the information requested in items one, three, four, five, and six should be withheld under section 552.103. Gov't Code § 552.301(b)(1). Although you indicate that the Assistant District Attorney for Comal County has requested the information be withheld due to the criminal investigation and charges, you have not shown how or why the information relates to the criminal prosecution or litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 483 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 638 at 4 (1996). We do not believe that you have established the applicability of section 552.103 for this information. Consequently, except for basic information, you may withhold the submitted information and information

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<sup>2</sup>*But see* Trans. Code § 724.018 (person who has given specimen to peace officer, or his attorney, may obtain specimen analysis information on request).

responsive to request two under section 552.108. The remaining information must be released, unless otherwise confidential by law.

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.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 122136

Enclosures: Submitted documents

cc: Mr. Mark Clark  
260 North Castell  
New Braunfels, Texas 78130  
(w/o enclosures)