



September 28, 1999

Lieutenant Brad Lancaster
Amarillo Police Department
200 E. 3rd
Amarillo, Texas 79101-1514

OR99-2747

Dear Lieutenant Lancaster:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126903.

The Amarillo Police Department received a request for a copy of an incident report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We note initially that section 552.108(c) provides that “basic information about an arrested person, an arrest, or a crime” is not excepted from disclosure. Basic information is 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. *See generally 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). Thus, you must provide the requestor with the front page offense report information. We will, however, consider your section 552.108 claim for the remaining information in the incident report.

Section 552.108 of the Government Code provides as follows:

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

(b) An 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 is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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.

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, for example, 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 prosecution.

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

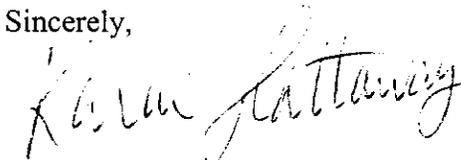
A governmental body asserting the applicability of section 552.108(a)(3) must demonstrate either that the records at issue were prepared by the prosecutor in anticipation of or in the course of preparing for criminal litigation, or that the records at issue actually reflect the mental impressions or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

You assert that the requested incident report is protected from public release “because the respective case investigation has been concluded but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication against any person.” If the case is currently being prosecuted, you may withhold the incident report from disclosure under section 552.108(a)(1) because release of the report would interfere with the prosecution. If, however, the case has come to a conclusion other than conviction or deferred adjudication, you may withhold the incident report from disclosure under section 552.108(a)(2). Examples of situations in which section 552.108(a)(2) would apply include: 1) a case in which the prosecutor declined to pursue charges; and 2) a case in which a criminal trial concluded in a result other than conviction or deferred adjudication. If the case resulted in conviction or deferred adjudication, you must release the incident report to the requestor.

In the future when you assert section 552.108, you should provide us with specific information about the status of the criminal case from both the investigative and prosecutorial perspectives, and you should be explicit as to which subsection of section 552.108 you are claiming. Failure to do so will result in the determination that section 552.108 does not apply to the information at issue.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 126903

Encl. Submitted documents

cc: Ms. Melody Matthews
1920 16th Street
Lubbock, Texas 79401
(w/o enclosures)