



January 5, 2000

Mr. Allen Smiley
Legal Assistant
Legal Services
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR2000-0015

Dear Mr. Smiley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131151.

The Department of Public Safety (the "department") received a request for information regarding the investigation into a specified fatal automobile accident. You assert no exception for the peace officer's accident report, and we assume this information has been released.¹ You claim that the balance of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. We generally presume that this section excepts information that relates to a pending or ongoing investigation or prosecution. *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). You relate that the subject investigation is ongoing and that you anticipate the filing of criminal charges in this matter. Based on your representations, and our review of the submitted information, we conclude that responsive information may be withheld under section 552.108(a)(1) of the Government Code. Note, however that section 552.108 does not except "basic" information about a crime or arrest from disclosure. Gov't Code

¹ See V.T.C.S art. 6701d § 47(b)(1).

§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). We also note that this basic factual information is not excepted by Government Code section 552.103. Open Records Decision No. 362 (1983).

Finally, the submitted materials include an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 525 (1989). Section 11 provides that

[t]he records [of an autopsy] are subject to *required* public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

The department must release the autopsy report to the requestor. In summary, the department must release the autopsy report and basic information about the crime or arrest, and may withhold the balance of the responsive information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

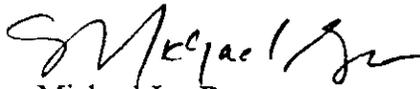
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 131151

Encl. Submitted documents

cc: Mr. Samuel Slaydon, Jr.
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(w/o enclosures)