



February 14, 2000

Mr. Nick Todaro
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-0533

Dear Mr. Todaro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132496.

The City of Midland (the "city") received a request for information concerning the investigation of an automobile accident that occurred on March 20, 1998 at a specified location and involving a named individual. You have submitted for our review information responsive to the request marked as exhibits "B," "C," "D," and "E." You assert that the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note at the outset that exhibit "B" consists of an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). We believe access to this information is governed by provisions outside the Public Information Act. Release of this information is governed by section 47 of article 6701d, V.T.C.S. Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

(i) the date of the accident;

(ii) the name of any person involved in the accident; or

(iii) the specific location of the accident.

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor provided the city with the statutorily required information. Therefore, the city is required to release a copy of the accident report to the requestor.

Section 552.108(a)(2) of the Government Code exempts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” You state that “the charges have not resulted in a conviction or deferred adjudication, due to the fact that the DWI offense was dismissed by the Midland County District Attorney’s Office.” We thus assume that both the investigation and prosecution of this matter have concluded, and that the investigation did not result in a conviction or deferred adjudication. We thus conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to exhibits “C,” “D,” and “E,” and that most of this information therefore may be withheld. We note, however, that exhibit “C” consists of an offense report. 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). You acknowledge the basic front page information is subject to release. We caution that 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* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

Because section 47 of article 6701d, V.T.C.S., and section 552.108 of the Government Code are dispositive, we do not address your section 552.130 assertion. 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

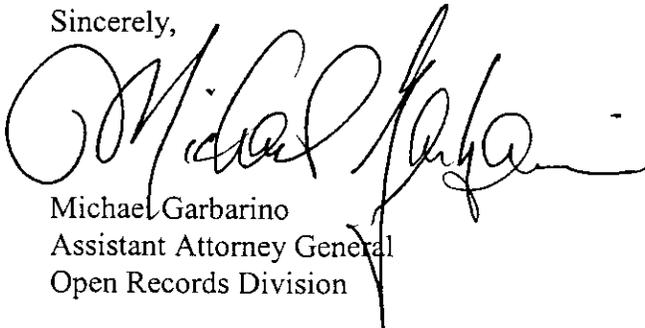
benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 132496

Encl. Submitted documents

cc: Mr. Charles Myers
Mouton & Mouton
P O Box 1030
Big Spring, Texas 79721-1030
(w/o enclosures)