



February 23, 2000

Ms. Katherine Minter Cary
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2000-0643

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132514.

The Office of the Attorney General received a request for three categories of information, including a “copy of any and all investigative file(s) in the possession of the Office of the Attorney General bearing on the adverse employment action” of Ms. Cynthia Kerr. You state that you have no information responsive to item number three and that you have released all information responsive to item number one and some information responsive to item number two. You claim that the remaining portions of item number 2 are excepted from disclosure under section 552.108 of the Government Code as “the requested information concerns ongoing criminal investigations and prosecutions.” We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 section 552.108 is applicable. *See* Gov’t Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). An agency that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 excepts records in its possession from required public disclosure. This office has held that records that otherwise qualify for the section 552.108 exception, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not

directly involved with law enforcement. Open Records Decision No. 272 at 1-2 (1981). In this instance, the Office of the Attorney General does not qualify as a law enforcement agency. However, you have submitted a letter from the Austin Police Department (“Exhibit C”) stating that these documents relate to an ongoing police investigation. Because the investigation is pending, we believe that the release of the information “would interfere with the detection, investigation, or prosecution of crime.” *Id.* Thus, you may withhold most of the information under section 552.108(a)(1).

However, as you correctly noted in your brief, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, you must release the basic front page offense and arrest information. We agree with the markings you have made on Exhibit B as to what constitutes basic information. Furthermore, you must also release a detailed description of the offense, which is considered to be basic information pursuant to *Houston Chronicle*. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

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 cursive script that reads "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/cwt

Ref: ID# 132514

Encl. Submitted documents

cc: Andrey B. Filipowicz
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(w/o enclosures)