



May 8, 2000

Ms. Lamis A. Safa
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2000-1770

Dear Mr. Safa:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 135124.

The City of Houston (the "city") received a request for all information relating to a specified police department incident number. You have submitted an offense report and a series of photographs for our review. You inform us that city will provide the requestor with the public release information portion of the offense report.¹ You claim that the rest of the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code, the "law enforcement exception," provides in relevant part that "[i]nformation 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). A governmental body that claims an exception to public disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the submitted information pertains to an investigation of an alleged sexual crime. You explain that the investigation presently is inactive because the police department has been unable to obtain additional information from

¹We note that, in this instance, the requestor is entitled to all of the basic information contained in the public release portion of the report. *See* Gov't Code § 552.023(a). The city should resubmit these same records for another ruling in the event that it receives a request for this information from another person.

the complainant. You further explain that should the complainant contact the department, it will resume its investigation. You also inform us that the applicable statute of limitations has not yet run. Based on your representations and our review of the submitted information, we find that the release of that information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1); *see also Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 184-85 (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). We therefore conclude that the submitted offense report and photographs are excepted from public disclosure under section 552.108(a)(1).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) requires the city to release the type of information that is considered to be basic front-page offense report information, even if that information is not literally located on the front page of the offense report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). You indicate that the city will release basic front-page information to the requestor. Accordingly, the city may withhold the rest of the requested information under section 552.108(a)(1). We note, however, that the city is not prohibited from also making that information available to the requestor, unless disclosure is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a).

As we are able to make a determination under section 552.108 of the Act, we need not consider your claim under section 552.130. 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).

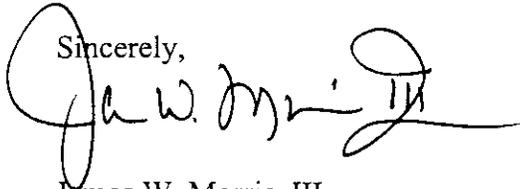
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 135124

Encl. Submitted documents