



June 12, 2000

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2000-2276

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136465.

Travis County (the "county") received a request for police incident report number 99-30561.¹ You claim that 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 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15th business day after the date of receiving the written request," must submit to the attorney general "a copy of the specific information requested[.]" Gov't Code § 552.301(e)(1) (D). If the governmental body fails to do this, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

¹The request was actually addressed to and received by the Travis County Sheriff's Office.

You state that the county received the request for information on April 7, 2000. Accordingly, the county's deadline for submitting the requested information at issue to this office expired fifteen business days later on April 28, 2000. *See* Gov't Code § 552.301(e)(1)(D). However, the county did not deliver the requested information at issue to this office until May 2, 2000. Therefore, the county missed its fifteen-day deadline as prescribed by section 552.301(e). Consequently, absent a compelling reason to withhold the requested information, the information must be released.

This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). Here, you advise that you are invoking sections 552.103 and 552.108 on behalf of another governmental body, the Travis County District Attorney's Office. Accordingly, we will consider your arguments for withholding the requested information. *See* Open Records Decision No. 586 (1991) (when a governmental body fails to timely seek an attorney general decision under the act, the need of another governmental body may provide a compelling reason for withholding the requested information).

Section 552.108(a)(1) excepts from disclosure “[i]nformation 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[.]” 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 the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted report has been referred to the Travis County District Attorney's Office and that it pertains to a pending criminal prosecution. Moreover, you state that representatives of the District Attorney's Office believe that release of the report would interfere with the prosecution. Based on these representations, we find that you have shown that the district attorney's interest in this matter overcomes the presumption of openness arising upon the county's failure to timely submit the requested report to this office, and that release of the requested report would interfere with the prosecution of crime. Accordingly, we conclude that the report is subject to section 552.108(a)(1).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. pp.--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, the county 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 submitted report. Although section 552.108(a)(1) authorizes the county to withhold the remaining information from disclosure, you may choose to release all or part of the report that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

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).

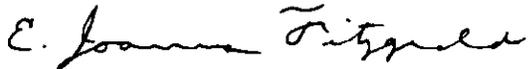
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

²Because section 552.108 is dispositive of this matter, we do not address your argument regarding section 552.103 except to note that, like section 552.108, section 552.103 does not except front page offense report information. *See* Open Records Decision No. 597 (1991).

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 "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 136465

Encl: Submitted documents

cc: Mr. Larry Zbranek
Republic Diversified
7530 FM 609
La Grange, Texas 78945
(w/o enclosures)