



June 21, 2000

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2000-2377

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136316.

The Texas Department of Public Safety (the "department") received a request for information pertaining to a vehicular accident that occurred on August 1, 1999 and which involved a fatality. The request seeks "copies of the photographs taken at the accident scene." The request additionally states: "After completion of their investigation we are requesting you to send us a copy of the report by the District Accident Reconstruction Team." You have advised this office and the requestors that the "accident reconstruction report" pertaining to the accident "has not been completed" and that, consequently, there are no documents responsive to that portion of the request.¹ You have provided for our review a representative

¹As to the request for the accident reconstruction report which you advise is not yet completed, we note that a governmental body has a good faith duty to relate a request to information which it holds. Open Records Decision No. 561 at 8 (1990). You have not submitted for our review any information pertaining to the accident reconstruction report. Nevertheless, based on your representation that the report has not been completed, and because the requestors specify that they are requesting only the *completed* report, we agree that there existed no information that is responsive to that portion of the request at the time the department received the request. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. Consequently, a governmental body is not required to comply with a continuing request to supply information on a periodic basis as such information is prepared in the future. Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Therefore, the department is not required, in response to the present request, to supply the accident reconstruction report upon its completion.

sample of the photographs that are responsive to the request.² You assert that this information is excepted from public disclosure under sections 552.103 and 552.108 of the Government Code. We have reviewed the submitted information and considered the exceptions you assert.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. 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(b)(1); *see also Ex parte Pruitt*,

²In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

551 S.W.2d 706 (Tex. 1977). You indicate that the requested information concerns a case in which the investigation is ongoing and that a related prosecution is pending. We therefore find that you have shown that the release of the requested information would interfere with the detection, investigation or prosecution of crime. 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). Thus, we conclude that you may withhold the requested photographs under section 552.108(a)(1).

Because section 552.108 is dispositive, we do not address the section 552.103 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).

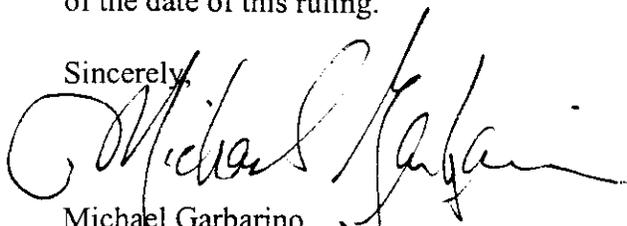
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 136316

Encl. Submitted documents

cc: Mr. & Mrs. Don Landers
2133 Caste Drive
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