



September 18, 2000

Ms. Sarajane Milligan  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2000-3585

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139137.

The Harris County Constable's Office, Precinct One, (the "constable") received a request for "all dispatch tapes . . . and all paperwork filed by the deputy involved in the incident made the basis of this claim including the arrest report and any offense report," relating to a specified incident. The requestor also sent the request to the Harris County Sheriff (the "sheriff"). You have released the basic information but claim that the remaining requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, 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 . . . 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[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to 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.

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<sup>1</sup> "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). See also Open Records Decision No. 127 (1976).

1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects information relating to a closed investigation or prosecution that did not result in a conviction or deferred adjudication. In this instance, you explain that the submitted information relates to a prosecution that resulted in dismissal of the charges. Based on your representations and our review of the submitted information, we conclude that it concerns a concluded case that did not result in a conviction or a deferred adjudication. Thus, you have demonstrated that the constable and sheriff may withhold the responsive information from public disclosure under section 552.108(a)(2). Because we find section 552.108 to be dispositive, we do not address your section 552.103 claim.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints

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 "Patricia Michels Anderson", followed by a horizontal line extending to the right.

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 139137

Encl. Submitted documents

cc: Mr. Michael L .Davis  
440 Louisiana, Suite 720  
Houston, Texas 77002  
(w/o enclosures)