



November 14, 2000

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

OR2000-4413

Dear Ms. Smith:

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 # 141265.

The Texas Department of Public Safety (the "department") received two requests from the same individual for a videotape and investigative documents relating to a traffic stop and arrest for driving while intoxicated. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions 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 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).

In raising section 552.108(a)(1), you assert that the requested information pertains to a pending criminal case. You also advised us, however, that the County Attorney of Montgomery County had informed you that the arrested individual had entered a pre-trial diversion program. You stated that under that program, the criminal charge against the arrested individual is subject to reinstatement if he fails to comply with the terms of the pre-trial diversion. With regard to that development, we notified you as follows on October 20, 2000:

Pursuant to subsections (b) and (c) of section 552.303 of the Government Code, we have determined that the following additional information is required for this office to render a decision.

The specific statute or court rule governing the pre-trial diversion program that the Defendant has entered.

The present status of the criminal charge against the Defendant, i.e., has the cas[e] been dismissed?

You responded to our inquiry and further explained the present status of the charges against the defendant. Having reviewed the additional information that you provided, we are satisfied that the information sought by the requestor relates to an ongoing criminal case. Although the department is not a party to that case, section 552.108 of the Government Code may be invoked by any proper custodian of information relating to alleged criminal conduct that remains subject to investigation or prosecution. *See* Open Records Decision Nos. 624 at 5-6 (1994), 372 at 4 (1983). Accordingly, we find that the department has demonstrated that the release of the information in question 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, 187 (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); *see also* Open Records Decision No. 216 at 3 (1978) (noting interests addressed in *Houston Chronicle*). Therefore, we conclude that the requested information is excepted from disclosure under section 552.108(a)(1) of the Government Code.

We note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c); *see also Houston Chronicle*, 531 S.W.2d at 186-87. The department must release basic front-page offense or arrest information, even if that information does not literally appear on the front page of the corresponding arrest report. *See* Open Records Decision No. 127 at 4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the requested information under section 552.108(a)(1). As we are able to make a determination under section 552.108 of the Government Code, we need not address your claims under sections 552.103 and 552.117.¹

¹We note, however, that a successful claim under section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). *See* Open Records Decision Nos. 597 (1991), 362 (1983).

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 about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



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

JWM/er

Ref: ID# 141265

Encl: Submitted documents & video tape

cc: Ms. Nancy Flake
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(w/o enclosures)