



March 12, 2001

Lieutenant Jim Koch  
Amarillo Police Department  
200 East 3<sup>rd</sup>  
Amarillo, Texas 79101-1514

OR2001-0952

Dear Lieutenant Koch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144877.

The Amarillo Police Department (the "department") received a request for six specified incident reports. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides as follows:

(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[.]

Gov't Code § 552.108(a). Generally speaking, subdivisions 552.108(a)(1) and 552.108(a)(2) apply to two mutually exclusive types of information held by a law enforcement agency. Section 552.108(a)(1) protects information that pertains to a pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. 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).

You state that “the case investigations have not been completed, the cases have not been adjudicated, and therefore have not resulted in a conviction or deferred adjudication against any person. These cases are still open pending further investigation by the detective assigned.” Section 552.108(a)(2) cannot apply to information that pertains to an open criminal case because an open case has not concluded in a final result. With regard to your section 552.108(a)(1) assertion, we note that incident report 1993-FI002752 pertains to vandalism that occurred in 1993 and the statute of limitations for this offense has expired. *See* Code Crim. Proc. art. 12.02; *see also* Code Crim. Proc. art. 12.01(6). You have not explained how or why the release of incident report 1993-FI002752 would interfere with the investigation of an offense for which the statute of limitations has run. Thus, you have not shown the applicability of section 552.108(a)(1) to this incident report. Based on your representation that the remaining incident reports, which are reports of “suspicion” in 1991, 1994, and 1997, are still open pending further investigation, we find that 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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 177. After reviewing the submitted incident reports, it appears that these reports contain mostly basic information that is required to be released. *See* Open Records Decision No. 127 (1976) (providing list of items that are considered basic information). Basic information includes the identity of the arrested person, location of the crime, identification of the complainant, the premises involved, the time of occurrence of the crime, the vehicle involved, a detailed description of the offense, and the names of the investigating officers. *See id.* Thus, you must release the basic front page offense and arrest information in the submitted incident reports.<sup>1</sup> You may withhold any remaining information under section 552.108(a)(1) of the Government Code but you must release incident report 1993-FI002752. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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

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<sup>1</sup>Please note that section 552.130 of the Government Code excepts license plate numbers.

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).

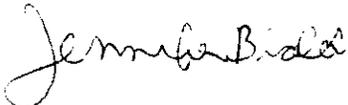
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/er

Ref: ID# 144877

Encl. Submitted documents

cc: Mr. Charles David Carver  
7603 Tarrytown  
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(w/o enclosures)