



April 30, 2001

Ms. Stephanie K. Stephens
Assistant Criminal District Attorney
Waller County
836 Austin Street, Suite 105
Hempstead, Texas 77445

OR2001-1759

Dear Ms. Stephens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146620.

Waller County (the "county") received a request for information related to specified criminal cases and the incarceration of a named individual pending prosecution of those cases. You indicate that the county does not possess certain requested items and that it has released certain other requested information. You claim that "full offense reports" are excepted from disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). As you have provided no comment in support of your contention that responsive information is excepted from disclosure by section 552.103 of the Government Code, we conclude that you have not met the required burden. Therefore, no information may be withheld under section 552.103 of the Government Code.

Section 552.108 of the Government Code protects certain information that deals with the detection, investigation, or prosecution of crime and is held by a law enforcement agency or prosecutor. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain 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*, 551 S.W.2d 706 (Tex. 1977). Here, you have not informed this office of the status of the prosecution. Section 552.108(a)(1) generally excepts from public disclosure information related to ongoing investigations or prosecutions. *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). Section 552.108(a)(2) excepts from public disclosure information related to investigations or prosecutions that concluded in a result other than conviction or deferred adjudication. Section 552.108(a)(3) excepts from public disclosure records that are prepared by a prosecuting attorney or that reflect the mental impressions or legal reasoning of a prosecutor. Section 552.108(b) excepts certain internal records or notation. As you have provided no comment in support of your contention that responsive information is excepted from public disclosure by section 552.108 of the Government Code, we conclude that you have not demonstrated that this section applies to the submitted information.

The submitted documents include information that is excepted from disclosure by section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

In conclusion, you must withhold Texas driver's license numbers, vehicle identification numbers, and Texas license plate numbers pursuant to section 552.130 of the Government Code. All other responsive information must be released.

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 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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/tr

Ref: ID# 146620

Encl: Submitted documents

cc: Ms. R. Jeanette Parham
P.O. Box 868
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(w/o enclosures)