



September 10, 2001

Ms. Angela K. Washington
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2001-4017

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151796.

The City of Rowlett Police Department (the "department"), which you represent, received two requests for (1) information relating to a domestic disturbance that occurred on June 20, 2001, and (2) the department's general orders concerning family violence. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.¹

As section 552.103 of the Government Code is the most inclusive exception you raise, we will address it first. Section 552.103, the "litigation exception," provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

¹Although you also raised sections 552.111 and 552.130 of the Government Code, you submitted no arguments in support of these exceptions. Therefore, we do not address sections 552.111 and 552.130. See Gov't Code § 552.301(e)(1)(A).

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body that raises section 552.103 bears the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for the information *and* (2) that the requested information is related to the litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (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.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

You indicate that the requested information relates to a pending criminal prosecution. You do not represent to this office, however, that the department is a party to the criminal case. Thus, you have not demonstrated that the information at issue relates to pending litigation to which the department was a party on the date of its receipt of the request for information. *See* Open Records Decision No. 392 at 3 (1983) (stating that litigation exception is applicable only where the litigation involves or is expected to involve the governmental body that claims the exception). You also assert that civil litigation is reasonably anticipated, based on a threat of a lawsuit, a related complaint against a police officer, and other circumstances. Having considered your arguments, we find that you have not shown that the information at issue relates to litigation that the department reasonably anticipated on the date of its receipt of the request for information. *See* Open Records Decision No. 452 at 5 (1986) (stating that requestor’s public statements of intent to sue on more than one occasion do not alone trigger litigation exception). Thus, the requested information may not be withheld from the requestor under section 552.103.

You also raise section 552.108 of the Government Code, the law enforcement exception. Section 552.108 excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). The governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You indicate that the submitted incident report relates to a pending case in which a criminal charge has been filed. Based on your representations, we find that you have demonstrated that the release of this incident report would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *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 at 3 (1978).

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The department must release the kind of information that is considered to be basic front-page information, including a detailed description of the offense, even if this information does not actually appear on the front page of the responsive incident report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The remaining information contained in the report may be withheld under section 552.108(a)(1).

You also claim that the department may withhold information relating to its procedures for investigating reports of family violence under section 552.108 pursuant to Open Records Letter No. 2001-1737 (2001). In response to our questions under section 552.303 of the Government Code, you represent to this office (1) that this same information relating to procedures for investigating family violence was at issue in Open Records Letter No. 2001-1737 (2001) and (2) that the department was permitted to withhold that information. Based on these representations, we conclude that the department may withhold the marked information relating to procedures for investigating reports of family violence in accordance with Open Records Letter No. 2001-1737 (2001). See Open Records Decision No. 673 at 6-7 (2001) (explaining that attorney general decision constitutes previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

In summary, none of the requested information is excepted from disclosure under section 552.103. The department may withhold the responsive incident report under section 552.108(a)(1), but must release basic information contained in the report under section 552.108(c). The department may withhold the marked information concerning procedures for investigating reports of family violence in accordance with Open Records Letter No. 2001-1737 (2001). As we are able to make these determinations, we need not address your arguments under sections 552.101, 552.102, and 552.117.

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).

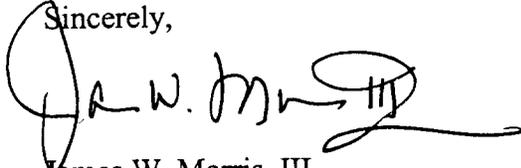
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with a large initial "J" and "W".

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

JWM/sdk

Ref: ID# 151796

Enc: Submitted documents

c: Mr. Ray Williams
2301 Shady Oaks Lane
Rowlett, Texas 75088
(w/o enclosures)