



April 16, 2002

Ms. Laura Garza Jimenez  
County Attorney  
Nueces County  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2002-1920

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161384.

The Nueces County Sheriff (the "sheriff") received a request for the personnel files of nine current or former employees. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). Some of the submitted documents constitute completed reports, evaluations, or investigations. These documents must be released under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 or expressly confidential under other law. Additionally, some of the submitted information also is contained in public court records. The sheriff must release this information under section 552.022(a)(17) unless it is expressly confidential under other law.

We note that section 552.117 of the Government Code is applicable to some of the information that is subject to section 552.022(a)(17). Under section 552.117(2), the sheriff must withhold the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer has complied with section 552.024 of the Government Code. Section 552.117(2) adopts the definition of "peace officer" found in article 2.12 of the Code of Criminal Procedure. We have marked the information that the sheriff must withhold under section 552.117(2). The sheriff has not shown that the other information that is subject to section 552.022(a)(17) is expressly confidential under other law.<sup>1</sup> Therefore, that information, which we have marked, must be released under section 552.022.

Next, we address the sheriff's claim under section 552.108 with respect to the rest of the requested information. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation 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[.]" A 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 that 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 inform this office that the requested information is contained in personnel files. Ordinarily, section 552.108 will not protect personnel information from disclosure. *See* Open Records Decision No. 562 at 10 (1990) (applying statutory predecessor). You also inform us, however, that a subpoena has been issued for these particular personnel files in connection with a pending criminal investigation. We note that section 552.108 may be invoked by any proper custodian of information relating to alleged criminal conduct that remains under active investigation or prosecution. *See* Open Records Decision No. 372 at 4

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<sup>1</sup>We note that sections 552.103 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, these exceptions are not other law that makes information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108).

(1983) (applying statutory predecessor). Based on your representation and the related documentation that you submitted, we find that the release of the remaining 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, 186-87 (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). We therefore conclude that the requested information that is not subject to section 552.022(a)(17) is excepted from disclosure under section 552.108(a)(1). *See also* Open Records Decision Nos. 562 at 10-11 (1990) (concluding that release of items from personnel file would interfere with pending criminal investigation), 350 at 3 (1982) (stating that information relating to complaint against law enforcement officer may be withheld under statutory predecessor if complaint may result in criminal charges and is under active investigation), 133 at 2 (1976) (stating that statutory predecessor might protect information gathered for purpose of investigating and detecting crime that employee of law enforcement agency may have committed).

In summary, the sheriff must withhold some of the information that is subject to section 552.022(a)(17) of the Government Code under section 552.117. The sheriff must release the other information that is subject to section 552.022(a)(17). The sheriff may withhold the rest of the requested information under section 552.108 of the Government Code. As we are able to make these determinations, we need not address the sheriff's claims under sections 552.101, 552.102, 552.103, and 552.130.

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

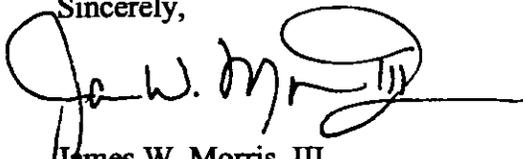
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 161384

Enc: Marked documents

c: Mr. Guy Lawrence  
*Corpus Christi Caller-Times*  
P.O. Box 9136  
Corpus Christi, Texas 78469  
(w/o enclosures)