



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 18, 2003

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2003-1050

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176619.

The College Station Police Department (the "department") received a request for "[a]ll information concerning the pick up" of a named individual on a specified date. You state that Texas driver's license information has been redacted in accordance with the previous determinations issued in Open Records Letter Nos. 2001-5847 (2001) and 2002-2022 (2002). See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of Gov't Code § 552.301). You claim that the rest of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We note that portions of the submitted audiotape do not relate to the incident that is the subject of this request for information. Thus, as those portions of the audiotape are not responsive to this request, this decision does not address the non-responsive 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 indicate that most of the requested information relates to an arrest that resulted in proceedings to revoke the arrested person's probation. You inform us that the revocation of probation is pending and assert that the release of related information would interfere with the prosecution of the case. You indicate that the remaining requested information relates to a pending internal investigation that pertains to the same arrest. We note that section 552.108 of the Government Code is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied). You claim, however, that the release of the information relating to the internal investigation would interfere with the pending criminal case. Furthermore, you have submitted a copy of a letter to your office from an Assistant District Attorney for Brazos County, stating that the release of the requested information would interfere with the prosecution of crime. Based on your representations, the assistant district attorney's letter, and our review of the requested information, we find that section 552.108(a)(1) is applicable in this instance. *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).

We note that 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 basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest 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 department may withhold the rest of the requested information under section 552.108(a)(1). As we are able to make this determination, we need not address your claims under sections 552.101 and 552.103.¹

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.

¹We note that 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 No. 597 (1991).

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).

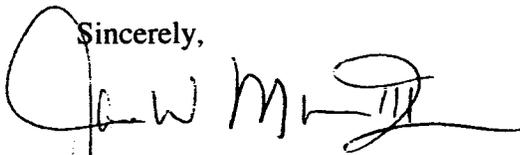
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 'J W Morris III', written over a large, stylized initial 'J'.

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

JWM/sdk

Ref: ID# 176619

Enc: Submitted documents

c: Ms. Holly May Reagle
1395 Cherokee
College Station, Texas 77842
(w/o enclosures)