OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 7, 2003

Mr. Ricardo Gonzalez
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540

OR2003-4660

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183836.

The Edinburg Police Department (the "department"), which you represent, received a request for six categories of information relating to the arrest of a client of the requestor for driving while intoxicated and evading arrest. We note that you have not submitted information responsive to item three of the request, pertaining to complaints filed and disciplinary actions taken against the police officers involved in the arrest, nor have you raised any exceptions to its disclosure. Furthermore, you have submitted a communication from the police department indicating that the department did not forward all of the information responsive to the present request to the city attorney. We assume that, to the extent responsive information other than the submitted information exists, the department has released such information to the requestor. If not, the department must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents include documents that have been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is confidential under other law. *See* Gov't Code

§ 552.022(a)(17). Sections 552.103 and 552.108 of the Government Code are discretionary exceptions that protect a governmental body's interests and are therefore not "other law" that make court records confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.– Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). We therefore determine that the department must release the submitted court-filed documents, which we have marked, to the requestor. With respect to the remainder of the submitted documents, we will address your claimed exceptions to disclosure.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, 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(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the individual at issue was charged with evading arrest and driving while intoxicated ("DWI"), and you advise that the charge of evading arrest was subsequently no-billed by the grand jury. You state, however, that the submitted documents pertain to both criminal charges, and you have submitted a letter from an Assistant District Attorney documenting that prosecution of the DWI charge was pending at the time of the present request. Thus, we find you have established that the release of the remainder of the submitted documents 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).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the department must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.[1] Although section 552.108(a)(1) authorizes the department to withhold the

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[1] We note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

remainder of the submitted information from disclosure, the department may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007. Based on this finding, we do not reach your other argument against disclosure.

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 Dep't of Pub. 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,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 183836

Enc: Submitted documents

c: Mr. Joseph A. Connors, III
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