



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 30, 2003

Ms. Linda L. Sjogren
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2003-5256

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185152.

The San Angelo Police Department (the "department") received a request for information relating to an incident that occurred on a stated date and involved a specified address and two named individuals. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108(a)(1) of the Government Code excepts from required public 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 claims an exception to disclosure under 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 state that the submitted information relates to an ongoing investigation. Based on your representation, 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*. *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*). In the absence of exceptional circumstances, the department must release basic front-page information under section 552.108(c). *See* Open Records Decision No. 366 at 1 (1983). This office has addressed several special situations in which “front page” offense report information may be withheld from public disclosure. For example, in Open Records Decision No. 366 (1983), we agreed that the statutory predecessor to section 552.108 permitted the withholding of information about an ongoing undercover narcotics operation, even though some of the information at issue was “front page” information contained in an arrest report. In that instance, the police department explained how the release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. *See* Open Records Decision No. 366 (1983); *see also* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982) (same), 169 at 6-7 (1977) (withholding of identifying information required demonstration of “truly exceptional circumstances such as, for instance, an imminent threat of physical danger”), 123 (1976).

In this instance, the front-page information that is subject to disclosure under section 552.108(c) includes the offense committed, the location of the crime, an identification and description of the complainant, the premises involved, the time of occurrence, the property and/or vehicle involved, a description of the weather, a detailed description of the offense, and the names of the investigating officers. *See* Open Records Decision No. 127 at 4 (listing front-page elements of offense report). You contend that the release of any front-page information would interfere with the detection, apprehension, and prosecution of the suspects in the case. You assert that certain information in the submitted incident report is known only to the victims and the officers investigating the case. You contend that disclosure of the details of the case would jeopardize the investigation and interfere with law enforcement. You also seek to withhold the identity of the complainant. You do not inform us, however, that the complainant is the subject of any specific or imminent threat of physical danger. *See* Open Records Decision No. 169 at 6-7 (1977). Having carefully considered your arguments, we conclude that you have not demonstrated the presence of any special circumstances that are sufficient to overcome the presumption of public access to basic front-page information. Therefore, the department must release basic information in accordance with section 552.108(c). The department may withhold the rest of the submitted information under section 552.108(a)(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.

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).

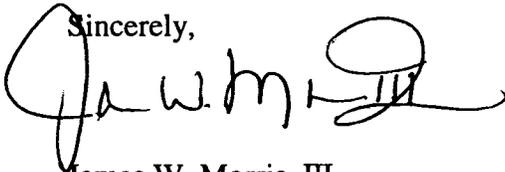
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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

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

JWM/sdk

Ref: ID# 185152

Enc: Submitted documents

c: Ms. Darsie Morales
305 East Avenue G
San Angelo, Texas 76903
(w/o enclosures)