



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-06940

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 229273.

The Houston Police Department (the "department") received a request for five categories of information relating to a specified case number and investigative procedures for homicides. You state that the department will release some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108(a)(1) of the Government Code excepts from 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[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 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 us that the information submitted as Exhibits 2, 3, 4, 5, 6, and 9 pertains to an investigation that is inactive pending additional leads. You also state, however, that the statute of limitations has not run and that the investigation may be reactivated once additional leads are developed. You assert that the release of Exhibits 2, 3, 4, 5, 6, and 9 would interfere with the detection

and investigation of a crime. Based on your representations, 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).

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 types of information deemed public by *Houston Chronicle*). The department may withhold the remaining information in Exhibits 2, 3, 4, 5, 6, and 9 under section 552.108(a)(1).¹

You also raise section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); see also *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet. h.) (Gov’t Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. See, e.g., Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would interfere with law enforcement because disclosure would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. See, e.g., Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to

¹As we are able to make this determination, we do not address your claims under sections 552.101 and 552.130 of the Government Code.

indicate why investigative procedures and techniques requested were any different from those commonly known).

A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). You inform us that the documents submitted as Exhibits 7 and 7a contain the department's standard operating procedures regarding crime scene investigations conducted by the homicide division. You have submitted the affidavit of an officer in the homicide division, stating how the release of all or part of the contents of Exhibits 7 and 7a would interfere with homicide investigations. Having considered the affidavit and reviewed the information in question, we find that the department has established that the release of parts of Exhibits 7 and 7a would interfere with law enforcement and crime prevention. The department may withhold that information, which we have marked, under section 552.108(b)(1) of the Government Code. Otherwise, we are not persuaded that section 552.108(b)(1) has been demonstrated to be applicable to any other information that the department seeks to withhold under this exception. We therefore conclude that the department may not withhold any the remaining information in Exhibits 7 and 7a under section 552.108(b)(1). *See* Gov't Code § 552.108(b)(1); *City of Fort Worth v. Cornyn*, 86 S.W.3d at 327; Open Records Decision No. 252 at 3 (1980).

In summary: (1) except for the basic information that must be released under section 552.108(c), the department may withhold Exhibits 2, 3, 4, 5, 6, and 9 under section 552.108(a)(1) of the Government Code; and (2) the department may withhold the marked portions of Exhibits 7 and 7a under section 552.108(b)(1). The remaining information in Exhibits 7 and 7a must be released.

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

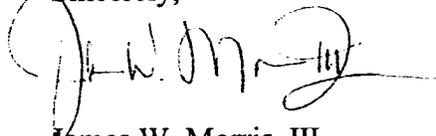
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



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

JWM/sdk

Ref: ID# 229273

Enc: Submitted information

c: Ms. Tommie Yeiter
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(w/o enclosures)