



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 17, 2008

Mr. Mark Shoemith  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2008-09750

Dear Mr. Shoemith:

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# 315985.

The El Paso Police Department (the "department") received a request for 28 categories of information relating to a specified arrest. You inform us that information encompassed by parts of the request will be released. You also inform us that although other parts of the request are unclear, the department has released information that may be responsive to part of the request.<sup>1</sup> You state that the department has no information that is responsive to other parts of the request.<sup>2</sup> You have submitted information that the department seeks to withhold under sections 552.101, 552.108, 552.115, 552.117, 552.1175, and 552.119 of the

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<sup>1</sup>We note that a governmental body must make a good-faith effort to relate a request to responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). If a request is unclear or if a large amount of information is requested, the governmental body may communicate with the requestor for the purpose of narrowing or clarifying the request. *See* Gov't Code § 552.222(b).

<sup>2</sup>We note that the Act does not require the department to release information that did not exist when it received this request, create responsive information, or obtain information that is not held by or on behalf of the department. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

Government Code. We have considered the exceptions you claim and have reviewed the submitted information.<sup>3</sup>

Section 552.108 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[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the department seeks to withhold records of the specified arrest, information relating to an internal investigation of a complaint filed by one of the arrested persons, and the arresting officer’s personnel records. As a general rule, section 552.108 is not applicable to a law enforcement agency’s personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) not applicable to documents obtained by police department for purpose of evaluating applicant’s fitness for employment), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov’t Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990) (predecessor to Gov’t Code § 552.108(b) not applicable to employment information in police officer’s file). In this instance, however, we understand you to contend that all of the submitted information is related to a pending criminal prosecution. You have provided a letter from an assistant district attorney for the Thirty-fourth Judicial District who states that the release of the requested information would interfere with the prosecution of the case. Based on your representations and the assistant district attorney’s letter, we conclude that section 552.108(a)(1) is generally applicable to the submitted information. *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* 531 S.W.2d at 186-88. The department must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an

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<sup>3</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

offense or arrest report.<sup>4</sup> See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public in *Houston Chronicle*). The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code. As we are able to make this determination, we need not address your other arguments 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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).

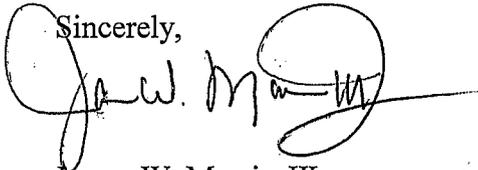
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<sup>4</sup>We note that the submitted information includes the arrested persons' social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. To the extent, however, that the requestor represents the arrested persons, he has a right to his clients' social security numbers. See generally Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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 Office of the Attorney General 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. 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". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

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

JWM/ma

Ref: ID# 315985

Enc: Submitted documents

c: Mr. Sam Snoddy  
Attorney at Law  
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(w/o enclosures)