



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2010

Ms. Candice M. De La Garza  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2010-08261

Dear Ms. De La Garza:

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# 387197.

The Houston Police Department (the "department") received a request for booking photographs of individuals other than juveniles who were arrested during a specified time interval and the jail log for the same time interval. You claim that the submitted photographs are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.<sup>1</sup> As you have not submitted the requested jail log, we assume that the department has released any information that is responsive to that aspect of this request, to the extent that such information existed when the department received this request. If not, then any such

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<sup>1</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).

information must be released immediately.<sup>2</sup> See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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). You state that release of the photographs submitted as Exhibits 2 and 3 would interfere with pending criminal cases. Based on your representations, we conclude that the department may withhold Exhibits 2 and 3 under section 552.108(a)(1). 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 also excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). You state that the remaining photographs submitted as Exhibits 4 and 5 pertain to concluded criminal cases that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that the department may withhold Exhibits 4 and 5 under section 552.108(a)(2).

In summary, the department may withhold the submitted photographs under section 552.108 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

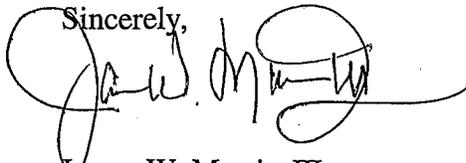
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

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<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

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# 387197

Enc: Submitted information

c: Requestor  
(w/o enclosures)