



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1997

Mr. Ron M. Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR97-2202

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 109238.

The Texas Department of Public Safety (the "department") received, from an attorney, two requests for information concerning an investigation of "criminal history check . . . run on [the requestor's client]." The first request seeks to obtain information "showing when and by whom criminal history checks have been run on [the requestor's client]." The second request asks for the "investigation file" regarding access to the criminal history information concerning the requestor's client. Specifically, the requestor has also asked "whether a criminal history check was run on [the requestor's client] at the time he was hired by Sterling County," as well as for the dates and names of the parties who made the inquiry or request for the criminal records. You have submitted the information which you contend is responsive to the request. You assert that the requested information may be withheld from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first consider whether section 552.108 excepts from required public disclosure any of the submitted information. The Seventy-Fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

*See* Gov't Code § 552.108. You assert that "the release of this information may alert a suspect to the fact that he is the subject of an investigation." You further state that "[t]he requested information would show the name of the individual checked, the purpose of the request, the law enforcement officer making the request, and the results of the inquiry." The information provided indicates that no charges have been filed in connection with the investigation at issue. We conclude that the department has generally shown the applicability of section 552.108(a)(2) to the submitted information.

Section 552.108(a)(2) provides that information is excepted from disclosure 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." The records submitted deal with the detection and investigation of a possible crime, but because the completed investigation did not result in a conviction or deferred adjudication, the information may be withheld from disclosure pursuant to section 552.108(a)(2).

We note, however, that you must provide the requestor with the basic front page offense report information in the submitted documents.<sup>1</sup> Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Front page offense report information is the public, basic information required to be disclosed. *See generally Houston Chronicle Publishing Co. v. City of*

---

<sup>1</sup>We note that generally front page incident report information may not be withheld from disclosure under either section 552.103 or section 552.108. *See* Open Records Decision No. 597 (1991) (concluding that statutory predecessor to section 552.103 did not except basic information in incident report); *see also 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) (information normally found on front page of offense report is generally considered public).

*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). Therefore, we conclude that, except for basic front page information, the requested records may be withheld under section 552.108 of the Government Code.<sup>2</sup>

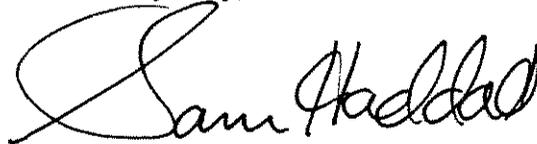
We next consider whether any of the information subject to release as basic front page information may be withheld under your other claimed exception. Section 552.103(a), known as the litigation exception, excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and,
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. See *Heard v. Houston Post Co.*, 684 S.W.2 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In this instance, we conclude that you may not withhold any of the remaining information under section 552.103, since the department is not a party to the pending or anticipated litigation. Open Records Decision No. 575 (1990) (Section 552.103 requires that governmental body be a party to litigation).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

---

<sup>2</sup>We note, however, that you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

SH/rho

Ref.: ID# 109238

Enclosures: Submitted documents

cc: Ms. Cindy Weir-Ervin  
Law Offices of Cindy Weir-Ervin  
5050 E. University, Suite 9A  
Odessa, Texas 79762  
(w/o enclosures)