



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-0153

Dear Mr. Steiner:

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# 111766.

The Austin Police Department (the "department") received a request for a specific incident report, pertaining to "a hazing incident . . . [which] occurred March 7, 1997, at Houston-Tillotson College." You state that the "front page" information has been released. You claim, however, that the remaining information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your assertion that section 552.108 of the Government Code excepts the requested information. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation 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; [or] (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. . . .

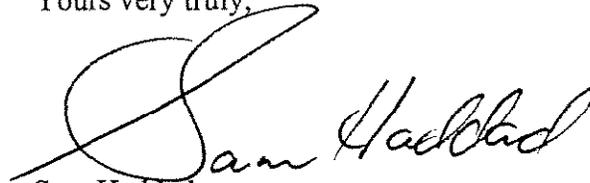
Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you have not stated that the requested information pertains to

a pending criminal investigation or prosecution so as to demonstrate that its release would interfere with the detection, investigation, or prosecution of crime. Nor have you demonstrated that the requested information relates to a criminal investigation that *concluded in a result* other than a conviction or deferred adjudication. See Gov't Code § 552.108(a)(2), (b)(2). Therefore, you may not withhold the requested information under this exception.

Next, we consider whether section 552.103 of the Government Code excepts the submitted information, not excepted by section 552.108, from required public disclosure. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You have not explained, nor is it apparent to this office, how the information relates to anticipated or pending litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.) (arrest by itself insufficient to establish reasonably anticipated litigation). We conclude that you have not met your burden in establishing the applicability of section 552.103 in this instance. The department, therefore, may not withhold the requested information under this exception.

Based on the preceding analysis, we conclude that the submitted information may not be withheld under either claimed exception. 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

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Ref.: ID# 111766

Enclosures: Submitted documents

cc: Mr. Shawn Alsup
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(w/o enclosures)