



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 2, 1998

Ms. Zandra L. Narvaez
City Attorney
The Kleberg Law Firm
Suite 900, North Tower
800 Shoreline
Corpus Christi, Texas 78401

Ms. Sarah J. Murphy
Acting City Secretary
City of Portland
P.O. Drawer 1285
Abilene, Texas 78374-1285

OR98-0873

Dear Ms. Narvaez and Ms. Murphy:

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# 113626.

The City of Portland (the "city") received a request for the "witness statements" of an investigation concerning the requestor. In response to the request, you submitted to this office for review the information which you assert is responsive. You claim that the submitted witness statements are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

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 Section 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;

(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.

Gov't Code § 552.108. 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.¹ 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 your brief to this office, you explain that the requested information concerns "an on-going internal investigation of police misconduct, . . . for the purpose of determining the appropriateness of criminal charges which may still be filed." In reliance on your statements in support of the claimed section 552.108 exception, we conclude that the submitted information may be withheld under section 552.108(a)(1), since the release of the requested information would interfere with the detection, investigation or prosecution of crime.² See Open Records Decision No. 216 (1978).

¹This office has determined that section 552.108 does not protect general personnel information from public disclosure. Open Records Decision No. 562 (1990) at 10 (applying predecessor statute).

²We note that in Open Records Decision No. 127 (1976), this office concluded that "identification and description of witnesses" is information which is protected by section 552.108 of the Government Code. As we resolve your request under section 552.108, we need not address your claimed exception under section 552.101.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 113626

Enclosures: Submitted documents

cc: Ms. Christina McClure
1016 Sea Breeze
Portland, Texas 78374
(w/o enclosures)