



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1998

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

OR98-1291

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# 115110.

The City of Austin (the "city") received a request for information pertaining to an individual you assert is presently a party to an appeal before the United States Court of Appeals for the Fifth Circuit. You assert that the responsive information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.103(a) excepts from 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.

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In your brief to this office, you state that “the requested information documents the investigation of the requester.” You go on to add that “the requester was convicted of felony theft and has filed an appeal in the United State Court of Appeals for the Fifth Circuit, Cause No. 97-50519 ” and add that “the State is a party to criminal litigation with respect to the subject matter of the requested information.” Upon review of the submitted information which consists of the requestor’s affidavit request, the requestor’s complaint form, incident report no. 94-3699633 and incident report no. 94-1771395, we are unable to determine how the information requested relates to the referenced litigation of a civil or criminal nature nor how 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 is involved. We, therefore, conclude the city has failed to demonstrate the applicability of section 552.103 to the requested information.

Section 552.108 provides:

(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; (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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (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.

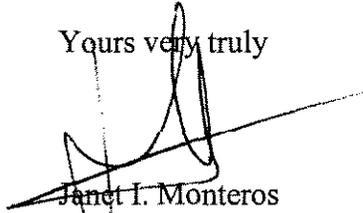
Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and

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). You have stated that the requested information pertains to a criminal investigation or prosecution which has resulted in a conviction so that section 552.108(a)(1) is not applicable. A governmental body seeking to withhold information pursuant to section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. This provision is not applicable as you have stated that a conviction has resulted from the prosecution.

Additionally you have not demonstrated nor have you explained how the remaining provisions encompassed under section 552.108 are applicable in the instant matter. Consequently, you have not met your burden under section 552.108 and must release the information

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115110

Enclosures: Submitted documents

cc: Mr. Christopher Hutson
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Austin, Texas 78745
(w/o enclosures)