



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

Ms. Leah Davis Bates
Attorney for the Department
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-2041

Dear Ms. Bates:

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# 117542.

The Texas Department of Public Safety (the "department") received a request for information pertaining to David James Freeman, Ex-Executive Secretary of the Texas Racing Commission, who is under indictment in Travis County. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code reads 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; 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 the requirements of Section 552.021 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.

You assert that the information at issue in the request constitutes the evidence that may be presented in his trial. You additionally assert that the release of the evidence before trial could result in prejudicing potential jurors and harm the state's ability to prosecute any indictments. Thus, we conclude that section 552.108(a) applies to the requested information. However, you must release the type of information that is considered to be front page offense report information. 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); Open Records Decision No. 127 (1976).

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, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref.: ID# 117542

Enclosures: Submitted documents

cc: Ms. Rebeca Rodriguez
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767-0670
(w/o enclosures)