



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 17, 1998

Mr. Charles D. Olson
Haley & Davis, P.C.
Attorneys at Law
510 North Valley Mills Drive
Waco, Texas 76710

OR98-2727

Dear Mr. Olson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119659.

The City of Bellmead (the "city"), which you represent, received a request for "a copy of the police report and a copy of all notes taken at the scene" of a specified incident. In response to the request, you submit to this office for review a copy of the records which you assert are responsive. You claim that the requested 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.

Initially, we note that among the records you have submitted to our office for review you included what appear to be documents filed with a court. To the extent the submitted information has been filed with a court, it is part of the public record and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). If, however, the information has not been filed with a court, we will consider whether the records are protected from disclosure by sections 552.103 and 552.108 of the Government Code.

Section 552.108, the "law enforcement exception," provides in relevant part 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; [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;

....

(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.

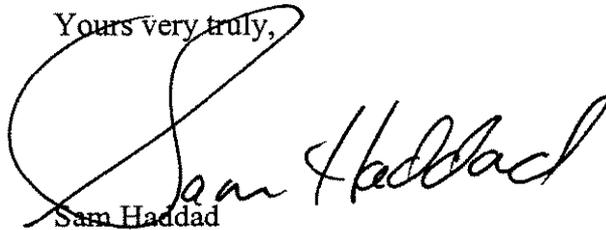
Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In your brief to this office, you state that “[t]he McLennan County Grand Jury has reviewed this matter and determined that no action should be taken.” Accordingly, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to the requested information.

However, we note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally 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). Therefore, we conclude that, except for the front page information, the city may withhold the requested information from disclosure under section 552.108(a)(1). Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.¹ *See* Gov't Code § 552.007.

¹We note that some of the information in the submitted documents is also confidential by law. *See* Health & Safety Code § 773.091(g) (access to emergency medical services records); Open Records Decision No. 598 (1991) (access to medical records governed by provisions outside Open Records Act.). Therefore, if you choose to waive your right to withhold the information under section 552.108, we urge you to exercise caution in releasing the information to the public. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Because we are able to make a determination under section 552.108, we do not address your other argument against disclosure.² 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/mjc

Ref.: ID# 119659

Enclosures: Submitted documents

cc: Mr. John G. Hale
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(w/o enclosures)

²We note that basic information in an offense report generally may not be withheld under section 552.103. Cf. Open Records Decision No. 597 (1991).