



March 8, 1999

Mr. Jay Garrett  
City Attorney  
City of Greenville  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR99-0650

Dear Mr. Garrett:

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# 122612.

The Greenville Police Department (the "department") received a request for a specific offense report. You claim that the requested offense report 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, you argue that the requested offense report is excepted from disclosure under section 552.103. 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.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for

meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the submitted offense report is related to a possible criminal prosecution. However, absent a letter or other documentation from the District Attorney's Office or the prosecuting attorney with the litigation interest stating that the information should not be released, we conclude that you have not met your section 552.103 burden. *See* Open Records Decision No. 469 at 2 (1987). The department has not shown that it has a litigation interest. Therefore, the requested offense report may not be withheld pursuant to section 552.103.

You also assert that certain marked portions of the offense report are excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

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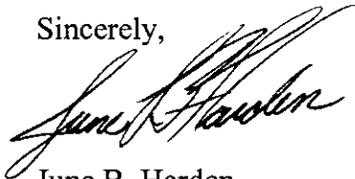
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it 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[.]

You state that the submitted offense report relates to an active file awaiting further investigation or prosecution. Because you assert that the release of the marked information would interfere with the investigation or prosecution of crime, we conclude that the department may withhold the information marked in red, purple, and green under section 552.108(a)(1). *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) (court delineates law enforcement interests that are present in active cases). We note, however, that the information marked in yellow is basic information which must be released in accordance with section 552.108(c) of the Government Code and *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).<sup>1</sup> Thus, except for basic information, the department may withhold the marked portions of the offense report under section 552.108(a).

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.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 122612

Enclosures: Submitted documents

cc: Ms. Suzanne C. Ekvall  
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(w/o enclosures)

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<sup>1</sup>Basic information is the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest. Basic information does not have to be actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co.*, 531 S.W.2d at 187; Open Records Decision No. 127 (1976).