



July 7, 1999

Mr. Don Ballard
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-1896

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125458.

The Crime Victims' Compensation Division of the Office of the Attorney General (the "OAG") received a request for all documents related to a specific victim's claim for compensation with the Texas Crime Victims' Compensation Fund, a copy of the "Crime Victims' Compensation Act Administrative Rules," and materials reflecting how the personnel of the Crime Victims' Compensation Division perform their duties in evaluating a claim. You have released some of the requested information; however, you assert that the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You assert that some of the requested information is protected by section 552.108 of the Government Code. Section 552.108(a) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Article 56.38(d) of the Code of Criminal Procedure provides:

On request by the attorney general . . . , a law enforcement agency shall release to the attorney general all reports, including witness statements and

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). 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.

criminal history record information, for the purpose of allowing the attorney general to determine whether a claimant or victim qualifies for an award and the extent of the qualification.

You explain that the offense report submitted to the OAG pursuant to article 56.38(d) "is currently still 'open.'" This office has held that "since information may be transferred between governmental agencies without destroying its confidential character, records which otherwise qualify for the section [552.108] exception do not necessarily lose that status while in the custody of an agency not directly involved in law enforcement." Open Records Decision No. 272 at 1-2 (1981). As for the other two documents for which you claim the protection of section 552.108, you assert that the OAG is conducting an ongoing investigation of possible criminal conduct which the OAG may refer to the appropriate district attorney for prosecution. This office has concluded that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if its release would interfere with law enforcement. Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor); Open Records Decision No. 493 at 2 (1988). As such, you contend that the release of any of the information would interfere with the investigation or prosecution of crime. Based on your assertions, we conclude that you may withhold the information under section 552.108. Attorney General Opinion H-917 (1976); Open Records Decision No. 516 (1989).

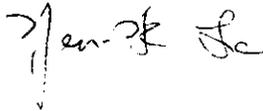
However, section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe that "basic information" refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 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). You must release basic information about the crime to the requestor.

You also assert that section 552.111 of the Government Code excepts the remaining submitted documents from public disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues.

Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We have marked the information that you may withhold under section 552.111; the remainder is either factual information or information that does not consist of advice, recommendation, or opinion, and therefore, must be released to the requestor. *Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.—Dallas 1998, pet. granted) (documents relating to problems with specific employee do not relate to making of new policy but merely implement existing policy); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.—Houston [14th Dist.] 1996), *writ denied per curiam*, 41 Tex. Sup. Ct. J. 575 (1998).

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/eaf

Ref.: ID# 125458

Encl. Marked documents

cc: Dr. G.G. Lindsay
9362 Springwater Drive
Dallas, Texas 75228
(w/o enclosures)