



November 29, 1999

Lieutenant Arturo Valdez
Central Record Division
City of McAllen Police Department
1501 Pecan Boulevard
McAllen, Texas 78501

OR99-3405

Dear Lieutenant Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129944.

The City of McAllen Police Department (the “department”) received requests for incident reports 97-19347, 97-14197, 97-2086 and 97-714. You assert that the information made public under *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975) has been released. You claim that the remaining requested information is excepted from disclosure under section 552.108(a)(1)¹ of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code, reads

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;

To withhold information under this section the governmental body must explain how release of the information would interfere with the detection, investigation, or prosecution of crime.

¹Note that information related to cases that have concluded with a result other than conviction or deferred adjudication may be withheld under section 552.108(a)(2) where that exception is raised and the governmental body either alleges the factual basis for this exception or those facts are apparent on the face of the submitted documents. However, as this exception has not been raised, it will not be addressed.

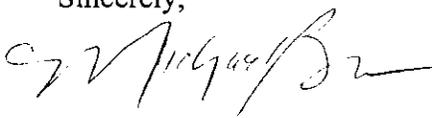
The courts have delineated the law enforcement interest in cases where the investigation or prosecution of an offense is ongoing. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston[14th Dist.] 1975), *writ ref'd n.r.e. per curiam*. This office has held that information, other than “basic” information, that relates to an investigation or prosecution that is pending may be withheld under section 552.108(a)(1). Open Records Decision No. 127 (1976). You state “in this particular case, the case investigation is ongoing.” You do not indicate to which case you refer.

We note that report 97-00714 relates to an incident of the commission of the crime of harassment which occurred “1/6/97.” Harassment is a class B misdemeanor. Penal Code § 42.07. Reports 97-014197 and 97-020863 relate to incidents of the commission of the crime of burglary of a vehicle, reported “4/19/97” and “6/12/97” respectively. Burglary of a vehicle is a Class A misdemeanor. Penal Code § 30.04. Report 97-019347 relates to an incident of the offense of criminal mischief that occurred “5/30/97.” Criminal mischief, with exceptions that do not apply here, is a misdemeanor if the resultant damage is below \$1,500. Penal Code 28.03. As the damage in this case is limited to a broken driver’s side window, the reported incident appears to entail a misdemeanor infraction. An indictment or information for any misdemeanor may not be presented more than two years after the commission of such a crime. Code Crim. Proc. §12.02.

Thus, apparently the subject offenses may not now be prosecuted. We are of the opinion that files of cases that cannot be prosecuted cannot properly be designated as ongoing investigations or prosecutions. You have made no other argument indicating how release of the information would interfere with the detection, investigation or prosecution of crime. Thus, we conclude that you have not demonstrated that section 552.108(a)(1) excepts these reports from disclosure. The information must therefore be released.

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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 129944

Encl. Submitted documents

cc: Mr. Thomas E. Jones
P.O. Box 1066
Lutz, Florida 33548
(w/o enclosures)