



December 21, 1999

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR99-3697

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130704.

The Baytown Police Department (the “department”) received a request for offense report number 99-43478. You claim that the requested information is excepted from required public disclosure under section 552.101 of the Government Code, in conjunction with common-law privacy and Chapter 411 of the Government Code, and under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” While you actually claim that the requested report is excepted under section 552.108(a)(1), the argument you offer seems to be based on section 552.108(a)(2).² You explain that the “information relates to an investigation from which no

¹We note that you claim to have received the request for information on August 27, 1999. If that were so, then the department would have missed its 10-day deadline as we did not receive your request for an attorney general decision until October 25, 1999. *See* Gov’t Code § 552.301. However, the submitted copy of the request for information indicates that it was submitted to the department on October 21, 1999. We will consider this indication to be sufficient evidence to establish the date that the department received the request. *See* Gov’t Code § 552.301(e)(1)(C).

²In contrast, section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” In order for information to fall under section 552.108(a)(1), you must explain how release of the information would

charges were filed, therefore, no conviction or deferred adjudication resulted.” Moreover, the submitted report indicates that the case has been closed as “unfounded.” We take this to mean that the case has been dismissed. Therefore, based on your argument and our review of the requested report, we find that the report is excepted from required public disclosure under section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). Thus, you must release the type of information that is considered to be front page offense report information to the extent that it appears in the requested report. Thus, with the exception of the basic front page offense report information, you may withhold the report from disclosure based on section 552.108(a)(2). Although section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

interfere with the detection, investigation, or prosecution of crime. One way of showing such interference is to explain that the information pertains to an ongoing criminal case. *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).

³Because section 552.108(a)(2) is dispositive of this matter, we do not address your other arguments.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/nc

Ref: ID#130704

Encl. Submitted documents

cc: Mr. Derwin Malone
7131 East
Baytown, Texas 77520
(w/o enclosures)