



August 18, 2000

Ms. Pamela Smith
Assistant General Counsel
Texas Department Of Public Safety
5805 North Lamar Box 4087
Austin, Texas 78773-0001

OR2000-3173

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 138157.

The Texas Department of Public Safety (the "department") received a request for the incident reports pertaining to four incidents described by the requestor. You explain that the department has been unable to locate two of the incident reports because the requestor has provided "inadequate identifying information."¹ You also explain that the department has released one of the requested reports, as well as a redacted copy of the first page of an offense report that you have submitted for our review. You claim that the information contained in the submitted offense report and that you have withheld from the requestor is

¹We note that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 at 8 (1990). However, it is also implicit in several provisions of the Act that the Act applies only to information already in existence at the time of the request. *See* Gov't Code §§ 552.002, .021, .227, .351. The requestor states she is seeking the incident reports in order to learn "the facts of the cases[.]" If the department holds information that discloses the facts of the case, whether or not such information is contained in an "incident report," we believe the department should inform the requestor of the types of information held by the department that may be responsive to her request. We additionally note that if the request does not provide sufficient information for the department to locate the information held by it that is responsive, the Act permits the department to ask the requestor to clarify the request. *See* Gov't Code § 552.222(b); *see also* Open Records Decision No. 304 (1982).

excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.108 of the Government Code states in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information you have withheld pertains to a pending case. We therefore believe that the release of the information at this time "would interfere with the detection, investigation, or prosecution of crime." *Id.*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). You must release the type of information that is considered to be front page offense report information, including a detailed description of the offense, even if this information is not actually located on the front page of the offense report. *See* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). In the instant case, you have withheld from the first page of the submitted report the arrestee's name and address. You also have withheld from the second page of the report a description of the vehicle involved. The arrestee's name and address and the vehicle description are all types of information that you must release to the requestor pursuant to section 552.108(c). *Id.* We agree, however, that you may withhold the remaining information that you have not yet released, including the arrestee's driver's license number and the vehicle license plate number.³ Because we find sections 552.108 and

²In asserting section 552.108, you state "all of the information relates to an investigation that *has not yet* resulted in a conviction or deferred adjudication." (emphasis added). These comments make an obvious reference to subsection 552.108(a)(2). However, please note that subsection 552.108(a)(2) is applicable "only in relation to an investigation that *did not* result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2) (emphasis added). In other words, subsection 552.108(a)(2) does not apply if the investigation and prosecution of the matter have not yet concluded. Thus, your comments do not demonstrate the applicability of subsection 552.108(a)(2) to the information at issue, and we have not granted the section 552.108 assertion under subsection 552.108(a)(2). Rather, it is based on your further representation to this office that the information pertains to a *pending* case that we have granted section 552.108, pursuant to subsection 552.108(a)(1).

³The department has the discretion to release to the requestor the information that this decision finds is excepted by section 552.108(a)(1). *See* Gov't Code § 552.007. However, we believe that the vehicle license plate number and the arrestee's driver's license number constitute information that the department must not

552.130 to be dispositive, we do not address your section 552.103 assertion, except to note that section 552.103 does not except the information that the department must release pursuant to section 552.108(c). Open Records Decision No. 362 (1983).

In summary, you may withhold the information from the submitted offense report that you have not yet released, except you must release to the requestor the arrestee's name, address, and the description of the vehicle involved.

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).

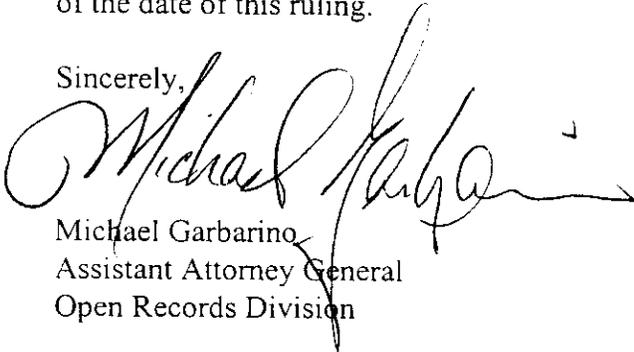
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

release pursuant to section 552.130 of the Government Code. Also, if the "SID#" on the first page of the submitted report is an individual's Texas identification number, this is information that also must not be released pursuant to section 552.130. See Gov't Code § 552.130.

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,

A handwritten signature in cursive script, appearing to read "Michael Garbarino". The signature is written in black ink and is positioned above the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 138157

Encl. Submitted documents

cc: Ms. Mary Perkins
RTV News Incorporated.
1040 North Las Palmas
Hollywood, California 90038
(w/o enclosures)