



November 1, 2000

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2000-4254

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140803.

Travis County (the "county") received a request for two documented statements made in regard to a specific criminal case. You claim that the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

As a preliminary matter, we address the timeliness of your request for an attorney general decision. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body "must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301. Otherwise, the requested information is presumed to be public information. Gov't Code § 552.302.

You state that the request for information, which was sent via electronic mail, "indicates that it was sent after hours on August 14, 2000, and therefore was not received by the Travis County Sheriff's Office until August 15, 2000." In fact, the request for information indicates that it was sent on "Mon, 14 Aug 2000 17:52:25 EDT." We note that it is possible to interpret this notation to mean that the request was sent, and presumably received by the county, at 4:52 Central Time during business hours. However, because the notation on the request does not enable us to glean with certainty the time that the request was received by the county, we have no basis for rejecting your representation that the county received the

¹The submitted information consists of an offense report which contains the requested statements.

request after hours. Therefore, based on your representation, we find that the county's request for a decision was timely in that it was received by this office on August 29, 2000, the tenth business day after August 15, 2000, the date on which the county apparently received the request for information.

We now turn to your argument regarding section 552.108. 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[.]" Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301(e); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the submitted information pertains to a pending criminal matter. Based on this representation, we find that release of the submitted report would interfere with an ongoing criminal case, and therefore, the submitted report is subject to section 552.108(a)(1).

However, information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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). Thus, the county must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the submitted report. Although section 552.108(a)(1) authorizes the county to withhold the remaining information from disclosure, you may choose to release all or part of the report that is not otherwise confidential by law. *See* Gov't Code § 552.007.²

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).

²Because section 552.108 is dispositive of this matter, we do not address your other claimed exceptions, except to note that, like section 552.108, section 552.103 does not except front page offense report information. *See* Open Records Decision No. 597 (1991).

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).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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\er

Ref: ID# 140803

Encl: Submitted documents

cc:



(w/o enclosures)