



February 23, 2001

Ms. Deanie Bostick-Martin
Records System Supervisor
Lubbock Police Department
P.O. Box 2000
Lubbock, Texas 79457

OR2001-0659

Dear Ms. Bostick-Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144366.

The Lubbock Police Department (the "department") received a request for the complete file of the investigation of the death of a named individual. You state that the department has released "a summary copy of the report of investig[a]tion." You claim that the rest of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

Section 552.108 of the Government Code, the "law enforcement exception," 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In this instance, you inform this office that the requested information "relates to a death and crime investigation." You state that "[t]he death investigation is closed." You further inform us, however, that "[t]he crime investigation relates to illegal drug activities and is open, information from the crime investigation having been turned over to the DEA." We understand this last statement to mean that the requested information has been provided to the federal Drug Enforcement Administration and relates to an ongoing criminal investigation involving the DEA. On that basis, and having carefully reviewed the

information in question, we conclude that you have established that the release of that information would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *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); Open Records Decision Nos. 372 at 4 (1983) (stating that any proper custodian of information relating to an incident involving allegedly criminal conduct that is under active investigation or prosecution may invoke section 552.108); 216 at 3 (1978) (noting law enforcement interests delineated in *Houston Chronicle*). We therefore conclude that, subject to the following qualification, the requested information is excepted from disclosure under section 552.108(a)(1).

Section 552.108 does not except from public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The department must release the kind of information that is considered to be basic front-page offense and arrest report information, including a detailed description of the offense, even if that information does not actually appear on the front page of a police report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the requested information under section 552.108(a)(1). We note that the department has the discretion to release requested information that is not confidential by law. See Gov't Code §§ 552.007, .101, .352.

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

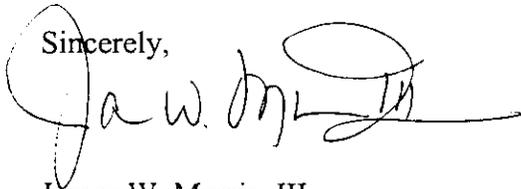
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144366

Encl: Submitted documents

cc: Mr. F. Bady Sassin
325 North St. Paul Street
Dallas, Texas 75201
(w/o enclosures)