



March 15, 2001

Mr. John Steiner  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2001-1034

Dear Mr. Steiner:

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# 144990.

The City of Austin (the “city”) received five requests for information pertaining to the Austin Police Department (the “department”) and to three present or former Austin police officers. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the representative samples of information you submitted.<sup>1</sup>

The requests for information relating to the three named police officers are addressed to the city’s Civil Service Commission. You state that the city will make the civil service records of two of the named officers available to the requestor. You point out that the civil service files of the third officer are the subject of Open Records Letter No. 2000-2968 (2000) and that the criminal litigation referenced in that ruling remains pending. Based on your representation and our review of the prior ruling, we conclude that the city may withhold information relating to the third officer in accordance with Open Records Letter No. 2000-2968 (2000).

We next address the three requests for information relating to the department. The requested information includes:

- (1) all documents pertaining to the 1993 Homicide Review Task Force report, including the full report, any ancillary reports, officer questionnaires,

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. See Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

records of interviews, a list of the cases reviewed, summaries of those cases, and any notes relating to the report;

(2) any internal or external audits, reviews, or examinations that include the homicide unit of the department and any internal or external annual reports about the department from 1986 to the date of the request; and

(3) the complete rosters for the department's homicide unit, including supervisors, lieutenants, sergeants, detectives, investigators, other officers, and support staff and secretaries.

In asking for this decision, you do not address the second and third categories of information. We therefore assume that the city has released information that is responsive to those requests. If not, then the city must do so promptly. *See* Gov't Code §§ 552.006, .301(a), .302; Open Records Decision No. 664 (2000).

You indicate that the submitted representative samples of information are responsive to the request for records relating to the 1993 Homicide Review Task Force Report. The submitted records therefore appear to be subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). Thus, section 552.022(a)(1) requires the release of a completed report or investigation, unless that information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Sections 552.103 and 552.111 are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived; as such, they are not "other law" that makes information expressly confidential for the purposes of section 552.022(a)(1). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 470 at 7 (1987) (governmental body has discretion to release information protected by statutory predecessor to section 552.111).

Section 552.108, the "law enforcement exception," provides in relevant part that "[i]nformation 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). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does

not supply the explanation on its face, how and why section 552.108 is applicable to that information. See Gov't Code § 552.301(e)(1)(A); *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 information in question pertains to pending criminal cases. You enclose a letter from the Office of the District Attorney for Travis County, which states that the district attorney "has several criminal cases currently pending that are related to information in the requested [1993 Homicide Task Force R]eport." The letter states that "[i]n each of [three specified homicide] cases, the subject matter of the litigation bears directly upon the entire contents of the 1993 Homicide Task Force Report and underlying documents." The district attorney "requests[s] that no documents used in drafting the report or incorporated into the final report itself be released at this time." Based on your representations, the district attorney's letter, and our review of the submitted information, we find 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, 186-87 (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 No. 372 at 4 (1983) (stating that where an incident allegedly involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of related information). Therefore, the city may withhold the requested information under section 552.108(a)(1). We note that the city has the discretion to release information that is protected by section 552.108, unless the information is made confidential by law. See Gov't Code § 552.007; Open Records Decision No. 177 (1977). As we are able to make this determination, we need not consider your claims under sections 552.101, 552.107, 552.117, and 552.130.

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

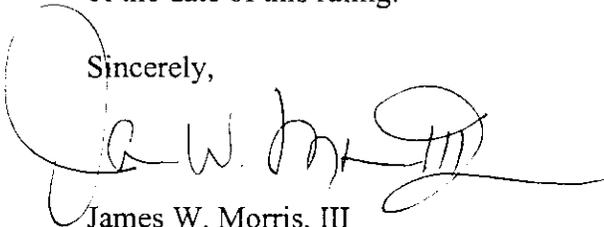
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 fluid and cursive, with a large initial "J" and "M".

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

JWM/er

Ref: ID# 144990

Encl: Submitted documents

cc: Mr. David Hafetz  
*Austin American-Statesman*  
305 S. Congress Ave.  
Austin, Texas 78704  
(w/o enclosures)