



November 27, 2001

Mr. Francisco J. Martinez
Assistant District Attorney
Cameron County
974 East Harrison Street
Brownsville, Texas 78520

OR2001-5477

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155294.

The Cameron County District Attorney (the "district attorney") received a request for all documents concerning a named individual. You inform us that you have released to the requestor both the accident report and basic information regarding an automobile accident in which the individual was involved. See Gov't Code § 552.108(c); see also *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) (summarizing types of information considered basic information); Transp. Code § 550.065 (concerning release of officer's accident report). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that Exhibits A and B are excepted from disclosure under section 552.108. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the

requirements of 552.021 if: (1) 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)(1), (b)(1), 301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the two exhibits consist of investigation reports and witness statements related to an active investigation and prosecution and that the release of this information would interfere with the detection, investigation, or prosecution of this crime. Based on your representations and our review of the information, we conclude that Exhibits A and B may be withheld from disclosure under section 552.108(a)(1).

In addition, you claim that Exhibit C is excepted from disclosure under section 552.101. Exhibit C consists of a representative sample of print-outs that contain criminal history record information ("CHRI") generated by either the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC").¹ The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the Texas Department of Public Safety ("DPS") or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note, however, that there is no prohibition on the release of criminal history record information pertaining to pending criminal actions. *Cf.* Gov't Code § 411.081(b) (authorizing release of CHRI "that is related to the offense for which a person is involved in the criminal justice system") (emphasis added); 28 C.F.R. § 20.20(c) (same).²

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Because sections 552.101 and 552.108 are dispositive, we do not address your other claims.

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).

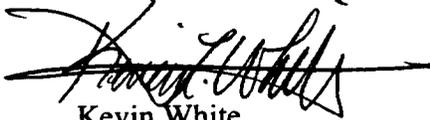
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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 "Kevin White", is written over a horizontal line.

Kevin White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 155294

Enc. Submitted documents

c: Mr. Frank Costilla
The Law Offices Of Frank Costilla, PLLP
5 East Elizabeth Street
Brownsville, Texas 78520
(w/o enclosures)