



March 1, 2002

Ms. Ann-Marie P. Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2002-1006

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159203.

The Travis County District Attorney's Office (the "district attorney") received a written request for the following categories of information:

1. All written statements taken of Robert Simmons from Detective Tim Kresta #2272.
2. All statements and/or affidavits of witnesses and Robert Simmons.
3. Audiotapes of Robert Simmons [sic] statements to Internal Affairs.
4. All typed statement [sic] from Internal Affairs concerning Robert Simmons.
5. Audiotape of victims and Robert Simmons from Internal Affairs and Criminal Investigation.
6. 911 Tape concerning Robert Simmons or information about Simmons.
7. All reprimands, counseling statements, Performance Evaluations and written disciplinary actions on Robert Simmons.

You state that the district attorney has released to the requestor "court-filed records" and "other law enforcement records." You seek to withhold other responsive records held by the district attorney pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We note, however, that the records you submitted to this office under Tabs A, B, and D do not appear to fall within the scope of any of the above listed requests. Consequently, we do not address the public nature of those documents in this ruling.

We will, however, address whether the information you have marked in documents under Tab C is excepted from public disclosure pursuant to sections 552.108 and 552.130 of the Government Code. You seek to withhold the identities and statements of witnesses pursuant to section 552.108 of the Government Code, which excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You contend that section 552.108 protects the witness information because the release of this information may subject the witnesses to intimidation or harassment. We note, however, that you have not raised any particular subsection of section 552.108 with regard to this information. Section 552.108(a)(1) generally applies to information held by law enforcement agencies that pertains to pending criminal investigations or prosecutions. Sections 552.108(a)(2) and 552.108(b)(2) protect law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. Because you inform us the witness information pertains to a criminal prosecution that has concluded in a deferred adjudication, we conclude that section 552.108(a)(1), (a)(2), and (b)(2) do not apply here. Additionally, because you do not argue that the witness information constitutes "work product" under section 552.108(a)(3) or (b)(3), this information may not be withheld on those grounds.

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would unduly interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984); *see also* Attorney General Opinion MW-381 (1981).

This office has previously held that information about witnesses may be withheld under a statutory predecessor of the current section 552.108 if it is apparent from an examination of the facts of a particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers. Open Records Decision No. 252 (1980). In this instance, you have not demonstrated how the release of the identities of the witnesses or their statements would subject the witnesses to retaliation or otherwise harm future cooperation between the witnesses and law enforcement. Consequently, the district attorney may not withhold any of the witness information under Tab C pursuant to section 552.108(b)(1). Because you have not met your burden of demonstrating the applicability of section 552.108 to the witness information, we conclude that this information must be released.

We agree, however, that some of the records under Tab C contain information that must be withheld pursuant to section 552.130(a)(1) of the Government Code, which requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the district attorney must withhold all Texas driver's license numbers and all Texas license plate numbers pursuant to section 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 159203

Enc: Submitted documents

c: Mr. Melvin Reed
P.O. Box 91146
Austin, Texas 78709
(w/o enclosures)