



May 8, 2002

Mr. Keith Stretcher
City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2002-2424

Dear Mr. Stretcher:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165339.

The Midland Police Department (the "department") received five requests for an offense report pertaining to an arrest on April 27, 2002 at the Windtree Apartments. The department claims that the requested information is excepted from public disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.

Section 552.108 of the Government Code states that information 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). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Thus, the department may withhold the requested information under section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing 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). The following information in an offense report is considered to be basic information:

1. offense committed;
2. location of the crime;
3. identification and description of the complainant;
4. premises involved;
5. time of occurrence;
6. property involved;
7. vehicle involved;
8. description of the weather;
9. detailed description of the offense; and
10. names of the investigating officers.

Id. at 187. The department states that it has released basic information and has submitted to this office a copy of the basic information that it has released. One requestor submitted comments stating that the department has not released the identification and description of the complainant and a description of the weather. Gov't Code § 552.304. The offense report contains no such information. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). We note that the department has not released the property involved. Because the property involved is basic information that is not excepted under section 552.108, the department must release this information, which we have marked. In addition, the department has released a "synopsis" of the offense. This "synopsis" actually contains the offenses committed, which is one of the types of basic information. This "synopsis" is not a detailed description of the offense. The department must release a detailed description of the offense, which we have also marked. Thus, with the exception of the basic information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007. Because section 552.108 is dispositive, we do not address your other claimed exceptions.

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).

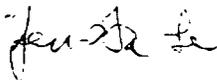
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 of 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 165339

Enc: Marked documents

c: Mr. Brian Davis
The Dallas Morning News
4625 71st Street, #210
Lubbock, Texas 79424
Fax: (806) 780-2743
(w/o enclosures)

Ms. Suzanne Halliburton
Austin American-Statesman
305 South Congress
Austin, Texas 78767
Fax: (512) 445-1701
(w/o enclosures)

Ms. Betsy Blaney
Associated Press
c/o Lubbock Avalanche Journal
710 Avenue J
Lubbock, Texas 79401
Fax: (866) 744-9603
(w/o enclosures)

Mr. Jim Vertuno
Associated Press-Austin
1005 Congress Avenue, Suite 995
Austin, Texas 78701
Fax: (512) 469-0800
(w/o enclosures)

Ms. Meta Minton
Midland Reporter Telegram
P.O. Box 1650
Midland, Texas 79702-1650
Fax: (915) 570-7650
(w/o enclosures)