OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 29, 2002

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-2870

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163557.

The Travis County Attorney's Office (the "county attorney") received a request for a list of information pertaining to a criminal case, including law enforcement officers' reports and narratives; documents and pleadings filed in connection with the case; statements of victims and witnesses; and videotapes relating to the defendant's arrest. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We note that the county attorney has not submitted any pleadings or other documents that also are a matter of public court record. We therefore assume that the county attorney has released any information, to the extent that it exists, that is responsive to that aspect of this request for information. If not, then the county attorney must release such information at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000); *see also* Gov't Code § 552.022(a)(17) (information also contained in public court record must be released unless other law makes it expressly confidential).

The county attorney claims that all of the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides in part:

> (a) 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:
>
> . . .
>
> (4) 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) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not provide an explanation on its face, how and why section 552.108 is applicable. *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).

You assert that the requested information constitutes the county attorney's work product in the criminal case that the requestor references. You state that the county attorney's office either obtained or prepared the requested information in connection with that case. Based on your representations and our review of the information in question, we conclude that you have demonstrated that this information either was prepared by a prosecutor in anticipation of or in the course of preparing for criminal litigation or reflects a prosecutor's mental impressions or legal reasoning. Thus, the county attorney has shown that section 552.108(a)(4) is applicable to the requested information.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page 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 county attorney must release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of an offense or arrest 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 county attorney may withhold the rest of the requested information under section 552.108(a)(4) of the Government Code. As we are able to make this determination, we need not address your arguments under sections 552.101 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).

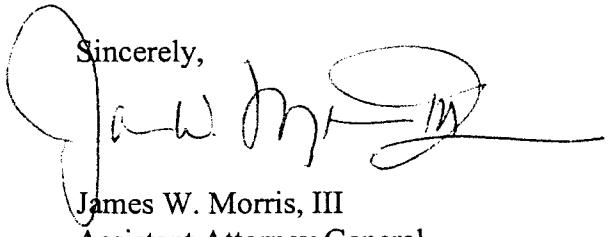
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



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

JWM/sdk

Ref: ID# 163557

Enc: Submitted documents

c: Mr. David H. Bradley
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(w/o enclosures)