



August 28, 2002

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

OR2002-4816

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# 167845.

The Travis County Sheriff's Office (the "sheriff") received a request for copies of offense reports, incident reports, warrants with probable cause affidavits, and returns and inventories on executed search and arrest warrants pertaining to the execution of search and arrest warrants by the sheriff individually or in connection with the Capital Area Narcotics Task Force for the period between January 1999 and May 31, 2002. You inform us that you are releasing to the requestor some of the responsive information, but claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.103, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) excepts from disclosure "[i]nformation 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

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.

crime." Generally, a governmental body claiming 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(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested records relate to pending criminal investigations and prosecutions. Based upon this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime, and thus, it is excepted from disclosure under section 552.108(a)(1). See *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) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *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). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. As we are able to make this determination, we need not address your other arguments, except as follows.²

You claim that the identity of certain confidential informants should be withheld pursuant to the informer's privilege under section 552.101. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege protects from disclosure the identity of an informant, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). However, the informer's privilege does not categorically protect from release the identification and description of a complainant, which is front page offense report information generally considered public by *Houston Chronicle*. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (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). The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist.

We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police

²Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

department explained how release of certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see also* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976). Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the identity of the complainant you seek to withhold under the informer's privilege. Consequently, we conclude that the sheriff may not withhold the identity of the complainant you have marked in the submitted information based on the informer's privilege, and it must be released to the requestor as basic information.

Finally, we note you also claim that information that reveals or tends to reveal the identity of confidential informants is excepted as prosecutorial work product. However, you raise no exception under which any such work product might be withheld, nor do you make any arguments in support of this assertion. *See Gov't Code § 552.301(e)*. Thus, we conclude the identity of any confidential informants may not be withheld as prosecutorial work product.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 167845

Enc. Submitted documents

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(w/o enclosures)