



October 28, 2002

Ms. Jennifer Gilchrist
Assistant City Attorney
City of Austin - Law Department
Box 1546
Austin, Texas 78767-1546

OR2002-6109

Dear Ms. Gilchrist:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171252.

The City of Austin (the "city") received a request for "a certified copy of the Criminal Investigation Report" of a particular incident and "a certified copy of the Crime Survey Summary form [sic] 1995 to 2001" for a particular address. You state that you have released some information to the requestor but claim that other requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that this office has previously reviewed and ruled on much of the submitted information concerning this investigation. In Open Records Letter No. 2000-3325 (2000), we considered a request for the "front page" of this same offense report. Based on the city's assertion that release of the victim's name and identifying information would jeopardize her safety, we agreed that special circumstances existed that required the city to withhold such information. In Open Records Letter No. 2000-3381 (2000), we considered a request for all records regarding the same incident. Based on the city's representation that the investigation was pending, we concluded that the offense report could be withheld, except for basic information, pursuant to section 552.108(a)(1); we also concluded that the victim's identifying information had to be withheld due to the presence of special circumstances.

You inform us that "the circumstances regarding the criminal investigation remain the same" and that "[t]he case remains open and under investigation." Based on these representations,

¹We assume that the 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.

we conclude that the city may continue to withhold the portions of the offense report that have previously been ruled on and the complainant's identifying information pursuant to our previous rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

We now address your arguments regarding the information that has been created and gathered since our previous rulings. 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 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 investigation at issue remains open and pending. Based on this representation, we conclude that the release of the additional information would interfere with the detection, investigation, or prosecution of crime. *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). As you inform us that "'front page' information has been released, except for information that identifies the victim of the offense," we conclude that you may withhold the newly created information pursuant to section 552.108(a)(1). *See* Gov't Code § 552.108(c) (providing that basic information may not be withheld under section 552.108); *see also Houston Chronicle*, 531 S.W.2d at 186-87 (defining basic information that must be released from law enforcement records); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information made public by *Houston Chronicle*).

In summary, to the extent the currently requested information has previously been ruled on by this office, the department must release or withhold such information in accordance with our previous rulings. The newly created information may be withheld pursuant to section 552.108(a)(1).

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).

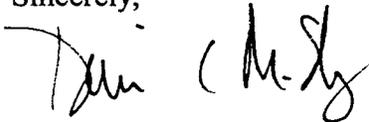
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is written in a cursive style with a large initial "D" and "M".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 171252

Enc. Submitted documents

c: Ms. Priscilla Viruegas
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San Antonio, Texas 78213
(w/o enclosures)