



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 15468
Austin, Texas 78767-1546

OR2003-4335

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183195.

The Austin Police Department (the "department") received a request for "any incident reported by [three named individuals] for the years 2001 through 2003." The requestor specifically asks for information concerning an incident reported on January 31, 2003 or February 1, 2003. You have informed the requestor that the department does not maintain any responsive information pertaining to the two specific dates. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed w.o.j.) (governmental body not required to release information that does not exist at time request is received). You claim that other requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing for submission of public comments).

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 the requirements of Section 552.021 if:

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

(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[.]

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1), (2), (c). Generally, a governmental body claiming section 552.108(a)(1) 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You indicate that offense report numbers 01-4164111 and 02-2411377 relate to open criminal investigations. Under these circumstances, we find that section 552.108(a)(1) applies to these reports because their release would presumptively 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). You also indicate that report number 02-1150405 pertains to a criminal investigation that has concluded in a result other than conviction or deferred adjudication. Based on your representation, and having reviewed the information at issue, we agree that section 552.108(a)(2) of the Government Code is applicable to this offense report.

We note, however, that information normally found on the front page of an offense or arrest report is not generally excepted under section 552.108. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense or arrest report information, including a detailed description of each offense, even if this information is not actually located on the front page of the report. Although section 552.108 authorizes the department to withhold the remaining information from the reports, it may choose to release all or part of the information that is not otherwise confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977).

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).

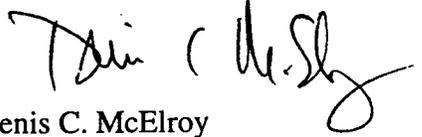
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 fluid and cursive, with the first name "Denis" being the most prominent.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 183195

Enc. Submitted documents

c: Mr. Robert S. Gholson
123 Vinsant Circle
San Antonio, Texas 78235
(w/o enclosures)