



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2004

Ms. Patricia J. Acosta
Assistant District Attorney
El Paso County Courthouse
500 East San Antonio Street, 2nd Floor
El Paso, Texas 79901-2420

OR2004-3126

Dear Ms. Acosta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199664.

The District Attorney for the 34th Judicial District (the "district attorney") received a request for (1) the "decline sheet" reflecting the name of the person who declined a named individual's criminal complaints; (2) the rape and child abuse unit case screening log reflecting the name(s) of the person(s) who screened and/or declined the complaints; (3) logs, notes, or records that would reflect the district attorney's whereabouts on May 17-18, 2002; and (4) any records of phone calls between the district attorney and two named police officers on May 17-18, 2002. You inform us that there are no responsive telephone records.¹ We note that the Public Information Act (the "Act"), chapter 552 of the Government Code, does not require the district attorney to release information that did not exist when this request was received or to create responsive information.² Your correspondence with the requestor reflects that you have released a copy of the district attorney's calendar for May 17-18, 2002. You claim that other responsive information is excepted from disclosure under

¹You explain that the telephones used by the district attorney's office are maintained by El Paso County and that the county has informed your office that no telephone records exist for May 17-18, 2002. You also inform us that the district attorney's personal cellular telephone records do not reflect the telephone numbers dialed or received. Under these circumstances, we need not address your other arguments concerning the district attorney's obligations with regard to the requested telephone records.

²See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that some of the information contained in Enclosure 9 does not appear to relate to the complaints that are the subject of the present request for information and thus is not responsive to this request. This letter ruling does not address the public availability of any information that is not responsive to the request, and the district attorney need not release non-responsive information.

Next, we address your claim under section 552.108. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]” Gov’t Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information submitted as Enclosures 8 and 9 relates to a case involving alleged sexual assault that was declined and thus did not result in a conviction or deferred adjudication. Based on your representations and our review of the information at issue, we conclude that section 552.108(a)(2) is applicable in this instance.

We note that 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney must release basic information under section 552.108(c), even if the information does not literally appear on the front page of an offense or arrest report.³ The district attorney may withhold the rest of the responsive information in

³We note that basic front-page information under section 552.108(c) includes the identity of the complainant. *See* Open Records Decision No. 127 at 3-4. Ordinarily, the district attorney would be required to withhold the identity of the complainant where the alleged offense is a sexual assault. *See* Gov’t Code § 552.101; *Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). In this instance, however, the complainant is identified by pseudonym. Moreover, the requestor is one of the complainant’s attorneys and, as such, would have a right of access to information about the requestor’s client that would otherwise be private. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987).

Enclosures 8 and 9 under section 552.108(a)(2). As we are able to make this determination, we need not address your other arguments against disclosure.⁴

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).

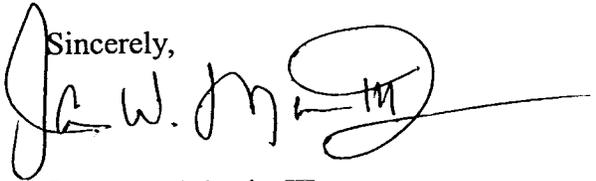
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

⁴We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

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 "J.W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 199664

Enc: Submitted documents

c: Ms. Theresa Caballero
Mr. Stuart Leeds
300 East Main Street, Suite 1136
El Paso, Texas 79901
(w/o enclosures)