



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-07528

Dear Ms. Champion:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 344803 (No. 2009086).

The City of Victoria (the "city") received a request for the use of force reports of two police officers who were involved in a specified shooting incident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that most of the submitted documents are not responsive to this request for information. In this instance, the requestor only seeks access to certain use of force reports. Consequently, the submitted offense report is not responsive to this request. This decision does not address the public availability of the offense report, which we have marked, and the city need not release that information in response to this request.

You claim that the responsive use of force reports are excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We note that use of force reports are administrative records. Section 552.108(a)(1) is generally not applicable to internal administrative records that are not related to an investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex.

Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov't Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); cf. *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) not applicable to background and reference information obtained by police department for personnel purposes). You contend, however, that the submitted use of force reports are related to a pending criminal investigation involving charges of aggravated assault. We note that the police officers who were involved in the use of force are listed in the related offense report as victims of the alleged assault. Based on your representations and our review of the use of force and offense reports, we find that release of the use of force reports at issue here would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). We therefore conclude that section 552.108(a)(1) is generally applicable to these use of force reports.

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*. See 531 S.W.2d at 186-88. The city must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The rest of the information in the submitted use of force reports may be withheld under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/cc

Ref: ID# 344803

Enc: Submitted documents

c: Requestor
(w/o enclosures)