



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-712

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 22847.

The Texas Department of Public Safety (the "department") has received a request for "a copy of the inventory taken by the Texas Rangers during their investigation at the Branch Davidian Compound near Waco." We understand that the requested information is currently in the possession of the United States Attorney's Office and that you are therefore unable to submit it to our office for review. You contend that sections 552.101 and 552.108 (former sections 3(a)(1) and 3(a)(8)) of the Open Records Act except the information from required public disclosure.

Section 552.108 excepts from disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

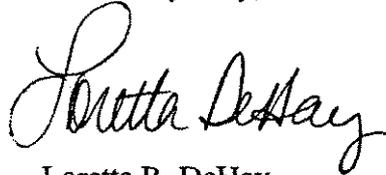
¹We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In a criminal case that is under active investigation, section 552.108 exempts from disclosure all information except that normally found on the first page of the offense report. See generally *Houston Chronicle Publishing 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) (copy enclosed). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434, 444 (1986). In addition, this office has recognized that a law enforcement agency in this state can raise section 552.108 to protect the law enforcement interests of a federal agency. Open Records Decision No. 340 (1982).

You contend that the information concerning the Branch Davidians relates to criminal prosecutions pending in federal court. You state that a United States attorney has successfully moved the U.S. District Court to deny access to information held by the Texas Rangers to the defendants in the cases; you may therefore withhold those documents pursuant to section 552.108.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 22847

Enclosures: Open Records Decision No. 127 (1976)

cc: Mr. James C. Holaday
1900 Acklen Ave. #604
Nashville, Tennessee 37212

²Because we have concluded that you may withhold the information pursuant to section 552.108, we do not address your arguments under section 552.101 in this ruling.