



Office of the Attorney General
State of Texas

December 31, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Gregory D. Humbach
Wichita Falls City Attorney
P.O. Box 1431
Wichita Falls, Texas 76307

OR93-775

Dear Mr. Humbach:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 20203.

The City of Wichita Falls Police Department (the "department") has received a request for "any complaints filed by [the requestor], or against [the requestor]. . . . [As well as] copies of complaints from any individual such as Mickey Cross, Marvela Davis, Scott Storm, Barbara Wahl, Dorothy and Robert Bentson or any statements made by the above named individuals." The department contends the information is excepted from public disclosure under former section 3(a)(8) of the Open Records Act (now found at section 552.108 of the Government Code).

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. 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.

(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

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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) at 3-4 (list of factual information available to the public) (copy enclosed).

After a file has been closed, either by prosecution or by administrative decision, the application of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

The department does not claim that the release of any of the closed complaint files would unduly interfere with law enforcement. Accordingly, none of the closed complaint files may be withheld under section 552.108. Although the majority of the complaints submitted for our review appear to be closed, any complaints responsive to the request that are under active investigation may be withheld from public disclosure under section 552.108 of the Government Code, with the exception of information which must be released under *Houston Chronicle Publishing Co.*

The information you have submitted for our review contains criminal history information which is protected under section 552.101 of the Government Code (former section 3(a)(1) of the Open Records Act).² Open Records Decision No. 565 (1990) at 10-

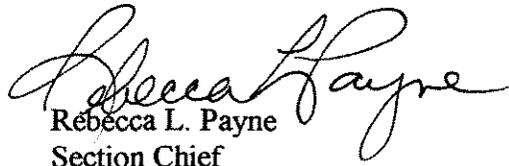
²Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be brought within the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under [former] Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly

12. Information received from the National Crime Information Center Interstate Identification Index ("NCIC III") may not be released by Texas agencies pursuant to federal laws and regulations.³ *Id.* Information obtained from the Texas Crime Information Center ("TCIC") may be released only to the subject of the criminal history search or his or her representative pursuant to a request in compliance with section 552.023 of the Government Code.⁴ *Id.* Accordingly, you may only release the TCIC information that relates to the requestor.

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 this office.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

MRC/LBC/rho

objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4.

³Criminal history information received from the NCIC III may be obtained from the Federal Bureau of Investigation in accordance with federal regulations.

⁴Section 552.023 provides in part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to records and copies of records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

Section 552.229 provides in pertinent part:

(a) Consent for the release of information excepted from disclosure to the general public but available to a specific person under Sections 552.023 . . . must be in writing and signed by the specific person or the person's authorized representative.

(b) An individual under 18 years of age may consent to the release of information under this section only with the additional written authorization of the individual's parent or guardian.

Ref.: ID# 20203

Enclosures: Submitted documents

cc: Ms. Leona Hancock
2554 Shepherds Glenn
Wichita Falls, Texas 76301
(w/o enclosures)