



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR94-166

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24678.

The City of Houston Police Department received an open records request for the police report regarding the shooting death of Andrew DeVries. You contend that the report is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

Section 552.103(a) excepts from required public disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party." Gov't Code § 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated and that the requested information relates to that proceeding. Open Records Decision No. 555 (1990) at 2. The mere chance of litigation is not sufficient to trigger section 552.103(a). A governmental body must provide concrete evidence that litigation may ensue. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision No. 328 (1982) at 1.

We conclude that section 552.103(a) does not except the police report in this case from required public disclosure. You have not shown with sufficient concreteness that criminal litigation is reasonably anticipated. The records you submitted for review indicate that there is no doubt who shot Mr. DeVries. You also advise us that this matter has been presented to the Grand Jury and that the Grand Jury returned no indictment.

Furthermore, the records reveal significant information about the circumstances under which the matter was presented to the Grand Jury. These circumstances suggest that the prospect of prosecution is remote in this case. Although you assert that additional information might permit this matter to be submitted to the Grand Jury again, you have not provided any specific evidence to support this assertion. Under these circumstances, we believe that this assertion is no more than mere conjecture and, thus, conclude that section 552.103(a) does not permit you to withhold the police report in this case.

Section 552.103(b) does not change this result. This section does not apply as an additional exception to required public disclosure. Rather, it simply provides a time frame for section 552.103(a). A governmental body must reasonably anticipate or be involved in litigation of a criminal nature for section 552.103(b) to apply. *See* Open Records Decision No. 518 (1989) at 5.

In pertinent part, section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" Gov't Code § 552.108(a). In cases that are still under active investigation or prosecution, section 552.108 excepts from disclosure all information except that generally 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 (1977). Once a case is closed, however, a law enforcement agency may withhold information under section 552.108 only if its release would unduly interfere with law enforcement or crime prevention. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 444, 434 (1986).

In this case, we conclude that section 552.108 will not except the police report from required public disclosure unless you can provide specific evidence that the investigation is proceeding. Based on the information you have provided, we do not believe that this case can be characterized as being under active investigation; under the circumstances here, the prospect of further prosecution is remote. *See* Open Records Decision No. 582 (1990) at 3. Furthermore, we have no evidence from which to conclude that release of the documents will unduly interfere with law enforcement or prosecution. Therefore, you may not withhold the police report under section 552.108 unless, within seven days after receiving this letter, you present us with specific evidence that the investigation and prosecution in this case are proceeding. This type of evidence might include the specific circumstances under which the prosecutor would present the case to the Grand Jury again or the specific steps the police are taking to further investigate the incident. General allegations that could be made in any case are not sufficient.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 24678

Enclosures: Submitted documents

cc: Terri Langford
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(w/o enclosures)