



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Ms. Annette Jones
Police Legal Advisor
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR94-410

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27490.

The City of Waco (the "city") has received a request for a 9-1-1 audiotape relating to a certain drive-by shooting. Specifically, the requestor seeks "a copy of the 9-1-1 tapes from 7:45 p.m. to 8:05 p.m. on June 23." You have submitted the requested audiotape to us for review and claim that sections 552.103 and 552.108 of the Government Code exempt it from required public disclosure.

Section 552.108 of the Government Code exempts from required public disclosure:

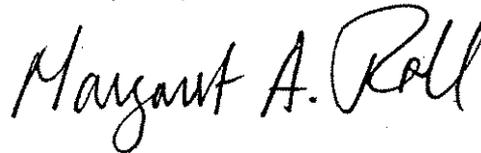
- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 exempts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). In closed cases, however, the law enforcement agency must demonstrate that releasing the information would unduly interfere with law enforcement before it can withhold the information under section 552.108. Open Records Decision No. 611 at 2.

You advise us that the requested information relates to an on-going criminal investigation. Having listened to the submitted audiotape, we conclude that you may withhold it in its entirety under section 552.108 of the Government Code. As we resolve this matter under section 552.108, we need not address the applicability of section 552.103 at this time.

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,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 27490

Enclosure: Submitted Audiotape

cc: Mr. Douglas Doe
Staff Writer
Waco Tribune-Herald
P.O. Box 2588
Waco, Texas 76702-2588
(w/o enclosures)