



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 29, 1994

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

OR94-425

Dear Mr. Karakashian:

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# 25764.

The Texas Department of Public Safety (the "department") has received a request for certain chemical analysis reports. Specifically, the requestor seeks "copies of exhibit #'s 600, 787, 788, and 1220" and "the chemical analysis reports of exhibit #'s 1120-1129, 1131, 1556-1565, 1600-1602, and 1649-1652 . . . [including] the complete individual breakdowns."¹ You have submitted a representative sample of the requested information to us for review.² You claim that sections 552.103(a) and 552.108 of the Government Code except the requested information from required public disclosure.

¹The department received this request March 8, 1994. The department responded to this request by requesting additional information necessary to clarify the request and to identify the requested information. The department received clarification March 31, 1994, and requested a decision of this office in a letter dated April 11, 1994, thereby requesting a decision within the 10 days mandated by section 552.301(a) of the Government Code. See Open Records Decision No. 333 (1982) at 2-3 (tolling 10-day rule pending clarification of request for information).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 exempts from required public disclosure the following information:

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

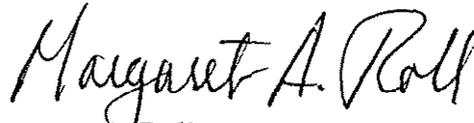
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

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 governmental body must demonstrate that releasing the information would unduly interfere with law enforcement or prosecution before it can withhold any of the information under section 552.108. Open Records Decision No. 611 at 2. Where there is an ongoing federal investigation, this office has concluded that information related to it may be withheld under section 552.108, even though the state investigation has been discontinued. *See* Open Records Decision No. 340 (1982).

You advise us that the requested information relates to a criminal investigation for which the requestor was convicted. You also advise us that the requestor was prosecuted together with several other defendants, two of which the United States Attorney in San Antonio is currently prosecuting. You advise us that the requested information relates not only to the requestor's prosecution, but also to the related pending federal prosecutions. Accordingly, we conclude that the department may withhold the requested information 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(a) 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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 25764

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(w/o enclosures)