



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Mr. Carter L. Hampton
Staples & Hampton
701 Texas Commerce Bank Building
860 Airport Freeway West
Hurst, Texas 76054

OR94-470

Dear Mr. Hampton:

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# 26012.

The City of Keller Police Department (the "department") received a request for information held by the department pertaining to two incidents of computer theft, a related charge of insurance fraud, and two arrests made in connection with these incidents. You claim that the requested information "except the first two pages of the offense report and the top one-half (approximately) of the single page Case Report" is excepted from required public disclosure by sections 552.021 and 552.101 of the Government Code. You also state that the requested information relates to an active criminal case that has not yet been adjudicated.

In light of this last statement, we assume that you intended to raise section 552.108 rather than sections 552.021 and 552.101. Section 552.021 does not except any information from disclosure. Rather, it states the general rule that information collected, assembled, or maintained by a governmental body is public information available to the public under the Open Records Act. Section 552.101 does except from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." However, you point to no statutes, constitutional provisions, or judicial decisions that make the information at issue here "confidential," and we find none. Section 552.108, on the other hand, is the "law enforcement" exception, which excepts from 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).

We conclude that section 552.108 excepts from disclosure the information you wish to withhold. For cases that are still under active investigation or prosecution, section 552.108 may be invoked to except 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 (1976). In closed cases, however, the governmental body must demonstrate that releasing the requested information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 444, 434 (1986). In this case, the records you submitted for review establish that prosecution is pending. Therefore, you may withhold all the requested information except that generally found on the front page of the offense report.¹

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# 26012

Enclosures: Submitted documents

cc: Mr. Jim Gean
740 Bancroft Road
Keller, Texas 76248
(w/o enclosures)

¹We note that the location of the information is not determinative of its status. The information identified by the court in *Houston Chronicle Publishing Co.*, 531 S.W.2d at 186-87, as information generally found on the first page of the offense report must be released regardless of where it is found. *See* Open Records Decision No. 127 at 5.