



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Ms. Linda Oakes
Records Division
League City Police Department
500 Walker Street
League City, Texas 77573

OR94-512

Dear Ms. Oakes:

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# 25335.

The League City Police Department received an open records request for all statements gathered by the department regarding a particular murder for which the requestor was convicted. Based on the arguments you make and the copies of opinions you provided us, we understand you to argue that the statements are excepted from disclosure by section 552.108 of the Government Code and by the informer's privilege recognized under section 552.101 of the Government Code.

We conclude that section 552.108 does not except the statements from required public disclosure. Section 552.108(a) excepts from disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" 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). The names and statements of witnesses in a closed case may be withheld if the law enforcement agency demonstrates that disclosure might either (1) subject the witnesses to possible intimidation or harassment or (2) harm the prospects of future cooperation by the witnesses. *See* Open Records Decision No. 297 (1981) at 2. In this case, you have not made the required demonstration. Therefore, you may not withhold the statements under section 552.108.

On the other hand, the informer's privilege may except the statements from disclosure. The informer's privilege protects the identity of persons who report possible violations of the law to the officials charged with enforcing that law. Open Records Decision No. 515 (1988) at 5. Under the informer's privilege, the names and addresses of informers can be withheld. *See* Open Records Decision No. 355 (1982). In addition, if the content of the informer's communication would tend to reveal the informer's identity, the privilege protects the communication itself, to the extent necessary to protect the informer's anonymity. Open Records Decision No. 549 (1990) at 5. The informer's privilege does not, however, apply when identity of the informer is known to the person who would have cause to resent the communication. Open Records Decision No. 208 (1978) at 1. In this case, the informer was clearly reporting violations of the law to the officials charged with enforcing that law. Furthermore, the contents of the statements would tend to reveal the identities of the informers. Therefore, you may withhold the statements provided that the requestor does not already know the identities of the informers.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

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Ref.: ID# 25335

¹We note that the requestor would know the identities of the informers if the informers testified at the requestor's trial or if the requestor became aware in some other manner that the informers gave statements regarding the murder for which the requestor was convicted.

cc: Mr. Larry Wayne Herrington
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(w/o enclosures)