



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 29, 1994

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR94-516

Dear Mr. Griffith:

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# 27760.

The City of Austin (the "city") has received three identical requests for information relating to a gang-related murder for which the requestor was convicted and is currently serving a prison sentence. Specifically, the requestor seeks 18 categories of information, including, among other things, the name of the arresting officer, the offense report, the arrest report, witness statements, the complainant's sworn affidavit, the arrest warrant, the names of the judges or magistrates who authorized the arrest warrant and who set bail, the jail "show up" sheet, the names and addresses of the grand jurors who issued the indictment, and the names of witnesses who testified before the grand jury. You advise us that the city has made some of the requested information available to the requestor. In addition, you advise us that the city is not in possession of some of the requested information, *e.g.*, the names and addresses of the grand jurors, the names of grand jury witnesses, and the name of the judge or magistrate who set bail.<sup>1</sup> You object, however, to release of the remaining information and claim that sections 552.101 and 552.108 of the Government Code exempt it from required public disclosure.

Section 552.108 of the Government Code provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

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<sup>1</sup>The Open Records Act does not require a governmental body to obtain information not in its constructive possession. *See* Open Records Decision No. 558 (1990).

(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 is excepted from [required public disclosure].

Section 552.108 excepts from required public disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is asserted, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. A governmental body may withhold the names and statements of witnesses if the governmental body determines:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4; *see also* Open Records Decision No. 297 (1981) at 2. This office will consider, among other things, whether a witness was given an express promise of confidentiality in determining whether section 552.108 protects the witness' identity. Open Records Decision No. 252 at 2. As always, whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision Nos. 434 at 2; 287 (1981) at 1-2.

You have submitted the requested offense report to us for review. It relates to a closed gang-related murder case. You explain that retaliation was a factor in this murder. In addition, you explain that the witnesses involved in the investigation have gang connections and many are known to each other. You advise us that the identities of the witnesses were concealed during the investigation in order to protect the witnesses' personal safety. You object to release of any information contained in the offense report and state as follows:

The offense report is replete with information about witnesses, summaries of their statements, and information about the activities of all of the parties involved in this case. To extract all information in the offense report which might lead to identification of any witnesses would be impossible. Any attempt to extract information from the report would place the Police Department in the position of having to predict what information might lead to identification of witnesses since many of the people involved in this offense were acquainted with each other.

We have examined the submitted information. We agree that releasing some of the offense report information might endanger the personal safety of witnesses and other persons connected with the investigation and might therefore unduly interfere with law enforcement. We have marked the information that the city may withhold under section 552.108 of the Government Code provided that it is not already available from the court record in this case. The remaining information, however, must be released. As we resolve this matter under section 552.108, we need not address the applicability of section 552.101 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: Marked documents

Ref.: ID# 27760

cc: Mr. Gary Salazar  
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(w/o enclosures)