



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Ms. Laura S. Portwood
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-585

Dear Ms. Portwood:

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# 24860.

The City of Houston (the "city") received a request for, among other things, the telephone bill/logs of the Houston Police Department for the month of September, 1992. You claim the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 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].
- (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].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports,

however, is public even during an active investigation. *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) at 3-4 (list of factual information available to the public).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You contend that "the numbers of confidential informants or numbers of law enforcement personnel would be impossible to segregate." You do not claim that any of the telephone numbers relate to active investigations nor do you explain how the release of the numbers would unduly interfere with law enforcement or crime prevention. You may not, therefore, withhold the information under section 552.108 of the Government Code.

We note, however, that some of the information may be confidential by law. Although we did not discern any identifiable social security numbers in the submitted documents, you claim that "[t]he number just across from the name is that person's social security number." A social security number or "related record" is excepted from required public disclosure under section 552.101 of the act in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994) (copy enclosed); see also 42 U.S.C. § 405 (c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether any social security numbers in the documents are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under federal law.

Furthermore, the home telephone numbers of peace officers and under certain circumstances the home telephone numbers of public employees are confidential. Section 552.117 of the Government Code provides that:

- (1) The home address or *home telephone number* of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code. [Emphasis added.]

In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold any home telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 requires you to withhold any home telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994); 455 (1987). You may not, however, withhold the home telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Accordingly, except for information that may be confidential as discussed above, you must release the requested information.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LBC/rho

Ref.: ID# 24860

¹We note that after reviewing the records, we are not persuaded by the city's contention that the records "would be impossible to segregate."

Enclosures: Open Records Decision No. 622
Submitted documents

cc: Mr. Leon Lavorn Kendrick
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(w/o enclosures)