



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Ms. Barbara Elliott-Roberts
City Attorney
Legal Department
P.O. Box 779
Galveston, Texas 77553-0779

OR94-769

Dear Ms. Elliott-Roberts:

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# 28163.

The City of Galveston (the "city") has received a request for information relating to the arrest of the requestor. Specifically, the requestor seeks:

1. The arrest report of James J. Mabe 7/31/94.
2. The name and duty of all police officers working the night shift covering the time period the night of the arrest.
3. . . . dispatch records of the call made to 911 by Lynda Mabe to the Police Department at approximately 8:45 p.m. same date.
4. . . . the video recording for the period I was booked, approximately 9:00 p.m. - 11:30 p.m.

You raise no objections to releasing the information requested in items 2 and 3 above. In addition, you advise us that information responsive to item 4 does not exist. The Open Records Act does not require a governmental body to make available information that does not exist. *See* Open Records Decision No. 572 (1990). You object to releasing part of the arrest report, however, and claim that section 552.108 of the Government Code exempts from disclosure "information pertaining to witnesses."

Section 552.108 excepts 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

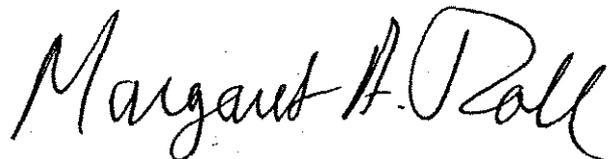
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Gov't Code § 552.108. 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 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *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)). The material generally found on the first page of the offense report does not include the identities, descriptions, and statements of witnesses. Open Records Decision Nos. 134 at 3, 127 at 4 (1976).

We understand that the information at issue here relates to a pending prosecution. For this reason, we conclude that the city may withhold the information pertaining to witnesses under section 552.108 of the Government Code. The city must, however, release the remaining information because it did not raise any exceptions to required public disclosure regarding that information. *See* Open Records Decision Nos. 515 (1988) at 6; 325 (1982) at 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 our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 28163

Enclosures: Submitted documents

cc: Mr. Jim Mabe
3114 Seawall Boulevard
Galveston, Texas 77550
(w/o enclosures)