



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 13, 1995

Ms. Lan Nguyen
Assistant City Attorney
City of Houston
PO Box 1562
Houston, Texas 77251-1562

OR95-002

Dear Ms. Nguyen:

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# 31136.

The Houston Police Department (the "department") received an open records request from a legal assistant with the Texas Resource Center for all documents held by the department regarding investigations that led to two separate prosecutions of an individual who is currently scheduled for execution. Although you initially contended that all of the records at issue come under the protection of the "litigation" exception of the Open Records Act,¹ Gov't Code § 552.103, you subsequently acknowledged prior rulings of this office regarding this exception and have released to the requestor all records to which the criminal defendant, through his attorneys, has had previous access. *See* Open Records Decision Nos. 349, 320 (1982). This office appreciates your cooperation in this regard and trusts that your office will continue this practice in the future.

You have submitted to this office for review thirteen pages of documents that you contend are excepted from required public disclosure by section 552.103 of the Government Code. You describe Exhibit "C" as follows:

¹You have also submitted to this office the affidavit of the assistant district attorney representing the state in the criminal defendant's actions for post-conviction remedies. The district attorney supports your contention.

Exhibit 'C' contains documents from the offense file numbered 47662883 which contains information directly related to the offense for which [the criminal defendant] was found guilty of capital murder. The pages are for internal use by homicide officers so that the investigation can proceed in a systematic manner and so that officers can quickly review the file. These pages are generally not forwarded to the District Attorney's office

Exhibit "C" consists of the following documents: a file "cover" sheet, blank pages with attached index tabs, a "Case Index" for the investigation file, a form entitled "Homicide Investigation Check List," and a "Synopsis" containing, *inter alia*, details of the offense, the identities of witnesses and a synopsis of their statements, the defendant's statements, and the identities of police officers involved in the investigation.

Because the cover sheet and blank pages with index tabs contain no substantive information, we see no basis for withholding these records under section 552.103. Also, because the "Case Index" merely lists the documents that the department has presumably released to the requestor, section 552.103 does not protect this record. Finally, we note that other than the criminal defendant's statement and the identities and statements of witnesses, the "Synopsis" consists solely of information specifically held to be public in *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). We have marked the portions of the "Synopsis" that the department may withhold pursuant to section 552.103. Also, because the "Homicide Investigation Check List" was created as part of the investigation that led to the capital murder conviction, we believe the department may withhold this document in its entirety. However, all remaining information contained in Exhibit "C" must be released.

Exhibit "D" consists of a three page 1983 offense report from the Houston Juvenile Division arising from the investigation of an assault that the criminal defendant committed while a teenage but for which he was later adjudicated as an adult.² Again, this record consists solely of the types of information specifically held to be public in *Houston Chronicle* and therefore must be released in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

²Consequently, this offense report is not made confidential under section 51.14(d) of the Family Code.

If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref.: ID# 31136

Enclosures: Marked documents

cc: Ms. Tatia Smith
Paralegal
Texas Resource Center
Vieux Carre Building
3223 Smith Street, Suite 215
Houston, Texas 77006
(w/o enclosures)

Ms. Lynn B. Lamberty
Staff Attorney
Texas Resource Center
Vieux Carre Building
3223 Smith Street, Suite 215
Houston, Texas 77006
(w/o enclosures)