



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

Ms. Linda Oakes
Records Supervisor/Custodian
of Records
League City Police Department
500 Walker Street
League City, Texas 77573

OR95-203

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# 29208.

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. We concluded in Open Records Letter No. 94-512 (1994) that the police department could withhold some of the requested information under section 552.101 of the Government Code in conjunction with the informer's privilege, but that section 552.108 of the Government Code, the "law enforcement exception," did not apply. We understand that since receiving our letter ruling, you have discovered additional records responsive to this request. You have submitted these records to us for review and assert the same exceptions to required public disclosure previously asserted.

Again, we conclude that section 552.108 does not except the submitted information 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 (1986), 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 of the Government Code.

We conclude, however, that the informer's privilege may except some of the submitted information 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, one of the submitted documents, which we have marked for your convenience, reveals the communication of an informer who was clearly reporting violations of the law to officials charged with enforcing that law. Furthermore, the contents of this document would tend to reveal the identity of the informer. Therefore, you may withhold the marked document provided that the requestor does not already know the identities of the informers.¹ The other submitted document, however, does not reveal the communication of a person reporting violations of the law to officials charged with enforcing that law. Rather, this document is simply the statement of a witness as to his observations at a given time and place; no violations of the law are reported or implied. We conclude, therefore, that the informer's privilege aspect of section 552.101 of the Government Code does not except this document from required public disclosure. Accordingly, this document must be released in its entirety.

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.

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. 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# 29208

Enclosures: Marked documents

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(w/o enclosures)