



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Mr. Randy Thomas
Attorney at Law
P.O. Box 934
Stephenville, Texas 76401

OR95-257

Dear Mr. Thomas:

The City of Stephenville (the "city") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 30901.

The city received a request for information relating to an automobile accident that resulted in one of the drivers being arrested and charged with driving while intoxicated. The requestor is an attorney who is seeking to obtain the requested information on behalf of his clients, who were injured in the accident. You assert that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code.

Section 552.108 excepts from disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [; and]
- (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.

When applying section 552.108, this office distinguishes between cases that are still under 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 an offense report. Open Records Decision No. 127 (1976). Section 552.108 is applicable while the

case is being investigated until it is closed through prosecution. Attorney General Opinion MW-446 (1982) at 2. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision Nos. 518 (1989), 216 (1978) at 4.

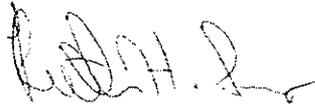
However, even if an investigation is ongoing, first page offense report information must be released regardless of where it is located. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5. We have enclosed a summary of the type of information that must be disclosed.

You indicate that this is an ongoing investigation and have submitted to this office for review various documents related to the investigation. After a review of the information at issue, we conclude that section 552.108 is applicable and that all but the first page offense report information and the affidavit for a search warrant may be withheld from disclosure. Article 18.01(b) of the Code of Criminal Procedure specifically provides that an affidavit for a search warrant is public information if, as in this situation, the warrant was executed. Since section 552.108 is discretionary with the governmental body claiming the exception, the city may choose to voluntarily release nonconfidential information.¹ Gov't Code § 552.352; Open Records Decision No. 216 (1978) at 2.

¹The records submitted to us for review also include information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the Houston Police Department, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information data that was generated by the federal government or another state may not be made available to the requestor by the city except in accordance with federal regulations. See Open Records Decision No. 565 (1990). Furthermore, any criminal history record information received from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 30901

Enclosures: Summary of Open Records Decision No. 127 (1976)
Submitted documents

cc: Mr. Charles L. Levy
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(w/o enclosures)