



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-361

Dear Ms. Briggs:

You have asked 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# 30989.

The City of Houston (the "city") received a request from two newspaper reporters for the following:

1. All reports referred to the accident review board from January 1993 until the present, or any other documents explaining the basis of each accident.
2. Copies of all Houston Police Department Vehicle Pursuit forms filed during 1994, including all summaries, overviews, conclusions, accounts of accidents and other pertinent information.

The city has released some documents to the requestors, but is still identifying the documents it has that are responsive to the request. You indicate that more than 2,000 documents held by the city are responsive to the request. You contend that some of the requested information is excepted from disclosure under sections 552.103(a) and 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 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. Open Records Decision No. 127 (1976). 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.

The city submitted to this office for review several vehicle pursuit forms and affidavits that indicate the incidents described in the forms are still under active law enforcement investigation. We agree that these records are excepted from disclosure pursuant to section 552.108. The city did not submit to this office any accident review board records. You indicate that the submitted vehicle pursuit forms are "representative documents." When requested records are numerous and repetitive, a governmental body should submit representative samples, but if each record contains substantially different information, all of the records must be submitted to this office for review. Open Records Decision Nos. 499, 497 (1988). As we have indicated, records concerning active investigations may be excepted from disclosure pursuant to section 552.108 except for the information generally found on the first page of the offense report. However, if the city wants to withhold under section 552.108 any records that concern closed investigations, it must demonstrate to this office as to each case that release of the information at issue would unduly interfere with law enforcement or prosecution.¹

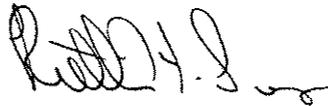
You also contend that the information at issue is excepted from disclosure pursuant to section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Since the records you submitted to this office are already excepted from disclosure pursuant to section 552.108, we do not need to address the applicability of section 552.103(a) to those particular records. As to any other responsive

¹We note that because section 552.108 is discretionary with the governmental body claiming the exception, the city may choose to voluntarily release the requested information.

records the city may identify as it examines documents, this office determines the applicability of section 552.103(a) on a case-by-case basis. Open Records Decision No. 350 (1982) at 3. To show the applicability of section 552.103(a), the city must demonstrate that as to each case litigation is pending or reasonably anticipated and that applicable records are related to that litigation.

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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 30989

Enclosures: Submitted documents

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