



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 21, 1995

Ms. Kari A. Hernandez  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR95-420

Dear Ms. Hernandez:

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# 33296.

The City of El Paso (the "city") received a request for "[a]ny and all April 1995 (up to the date of [fulfillment] of this request) memos and other correspond[ence] between Fire Marshal William Wilcox and Fire Department administration . . . , as well as any correspond[ence] . . . for the same time period between the fire Department and any other city departments." The city contends that one memorandum responsive to the request is excepted from required public disclosure under sections 552.108 and 552.111 of the Government Code.

Section 552.108 provides that:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].
- (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 is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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) at 3-4 (listing factual information available to public).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

The letter submitted by the city requesting an open records ruling states that "[a] detailed discussion of the record and why it is exempt from disclosure would result in the disclosure of information which we claim is confidential under §552.108 and §552.111." The city submitted its arguments for withholding the document from public disclosure as well as the document itself in a separate sealed envelope. This brief, however, does not contain "[a] detailed discussion" for withholding the requested information under section 552.108. You acknowledge that the information does not relate to an active investigation by the district attorney or the city police department. Yet, you insist that release of the information "will clearly interfere with law enforcement's efforts to investigate and potentially prosecute." We do not agree. You have not demonstrated how the release of this information would unduly interfere with law enforcement and crime prevention nor does the requested document support your claim. You may not withhold the memorandum under section 552.108 of the Government Code.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

We have reviewed the memorandum submitted to our office. We agree that the first two paragraphs consist of advice, recommendations, opinions, and other material reflecting the policymaking process of the city. However, the factual information contained at the top of the memorandum may not be withheld under section 552.111. *Id.* Furthermore, the third and fourth paragraphs do not on their face relate to any "policy" issues. Although these paragraphs clearly contain advice, recommendations, and opinions, they address specific activity and the response to that activity, not overall policy issues. Accordingly, the city may withhold the first two paragraphs under section 552.111 of the Government Code. For your convenience, we have marked the information that may be withheld under section 552.111. The remaining information must be released.

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,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/LBC/rho

Ref: ID# 33296

Enclosures: Marked documents

cc: Mr. Patrick C. McDonnell  
Reporter  
El Paso Herald-Post  
P.O. Box 20  
El Paso, Texas 79999  
(w/o enclosures)