



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Jack Harwell
Sheriff
McLennan County
219 North 6th Street
Waco, Texas 76701-1363

OR95-892

Dear Mr. Harwell:

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# 34822.

The Office of the McLennan County Sheriff (the "sheriff") received a request for information relating to the "police pursuit" of a motor vehicle that was involved in an automobile accident during the alleged pursuit. You claim that the requested information is excepted from required public disclosure under sections 552.103 and 552.108 of the Government Code.

Section 552.103(a) excepts information relating to litigation that is pending or reasonably anticipated. *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. You claim that because the request was made by the attorney for the automobile accident victim the information is excepted under section 552.103. We disagree. A surmise that litigation will occur is not enough; there must be some concrete evidence pointing to litigation. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision Nos. 518 (1989) at 5, 328 (1982). This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 551 (1990), and when a requestor hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990). Accordingly, you may not withhold the requested information under section 552.103 of the Government Code.

Section 552.108 excepts information relating to allegedly criminal conduct that is still under active investigation or prosecution, Open Records Decision Nos. 474 (1987), 372 (1983), and information that 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). 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). You may not, therefore, withhold the first page of the offense report or the officers' narratives of the offense. Moreover, we do not agree with your assertion that the release of the policy on the operation of sheriff department vehicles and high speed pursuit would unduly interfere with the prevention of crime and the enforcement of the law. Accordingly, you may not withhold the two page policy statement under section 552.108 of the Government Code.

We note, however, that the requested information contains information made confidential by law. Criminal history record information compiled by a criminal justice agency, *see* Gov't Code § 411.082(2), is confidential by law, *see id.* §§ 411.083, .089(b)(1).¹ This information must be withheld from disclosure. A criminal justice agency, however, is not prohibited from releasing information that is related to the current offense for which a person is involved in the criminal justice system. *Id.* § 411.081(b); *see also id.* § 411.081(a), (c).

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

¹Criminal history record information does *not* include "identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system" or "driving record information maintained by the" Department of Public Safety under V.T.C.S. article 6687b. Gov't Code § 411.082(2)(A), (B).

RHS/LBC/rho

Ref: ID# 34822

Enclosures: Submitted documents

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(w/o enclosures)