



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 10, 1995

Mr. Robert L. Dillard, III
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR95-1064

Dear Mr. Dillard:

On behalf of the City of University Park (the "city"), 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# 35817.

The request for information concerns a police investigation into an alleged interference with child custody case. You assert that the requested information is excepted from required public disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. You have submitted representative samples for our review.

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, any proper custodian of information which relates to the incident may invoke section 552.108. 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).¹

You state that the case at issue was filed with the Dallas County District Attorney's Office. Accordingly, except for the type of information deemed public by the *Houston Chronicle Publishing Co.* case, you may withhold the requested information under section 552.108.²

However, documents that have been publicly filed in the court system may not be withheld from disclosure under section 552.108. See generally Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 (1993). You state that the divorce decree and custody order concerning the requestor are responsive to the request. You "assume that [the requestor] has those items and that they are not included within his request." The requestor seeks "all records, documents, complaints, reports, everything pertaining to Ms. Patterson and Mr. Martinez." (Emphasis added.) The fact that the requestor may have copies of these documents does not release the city from its burden of responding to this request for information. If the requestor seeks these documents, the city may not withhold this information. Finally, one document submitted for our review appears to be a probable cause affidavit for an arrest warrant. We note that under article 15.17(a) of the Code of Criminal Procedure, the individual who is arrested must be informed by a magistrate "of the accusation against him and of any affidavit filed therewith."

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.

¹We note that the type of information deemed public by the *Houston Chronicle Publishing Co.* case is generally not excepted under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

²None of the records submitted for our review contain the type of information excepted under section 552.111 of the Government Code. You may not withhold the requested information under section 552.111, nor may you withhold information deemed public under the *Houston Chronicle Publishing Co.* case under section 552.111. We note, however, that some of the records submitted for our review may be protected under the doctrine of common-law privacy. We caution the city that although section 552.108 is a discretionary exception waivable by the governmental body, Gov't Code § 552.007, releasing information deemed confidential is a criminal misdemeanor. See *id.* § 552.352.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive style with a long, sweeping underline.

Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/rho

Ref: ID# 35817

Enclosures: Submitted documents

cc: Mr. Robert D. Martinez
P.O. Box 178
Lorena, Texas 76655
(w/o enclosures)