



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Mr. Firmin A. Hickey, Jr.
City Attorney for the City of Mont Belvieu
11511 Katy Freeway
Suite 225
Houston, Texas 77079

OR96-0418

Dear Mr. Hickey:

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# 38568.

The City of Mont Belvieu Police Department (the "department") received a request for the release of an attempted murder suspect's name. You contend the requested information is excepted from required public disclosure under 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
- (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.

Gov't Code § 552.108. 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. *See generally 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). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

You claim that the investigation of the case is ongoing. Ordinarily, under the circumstances of an active investigation, all information is withheld except the first page of the offense report but in this instance where the attempted murder victim is a child, section 262.201 of the Family Code applies through section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, as in this specific instance, through section 262.201 of the Family Code which reads as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe the requested information is contained within reports, communications, records, or files used or developed in an investigation under chapter 261 of the Family Code. Unless the city has adopted a specific rule with regard to the release of this type of information, we believe that the reports, records, communications or files which would reveal the name of the murder suspect are confidential pursuant to section 262.201 of the Family Code. See Open Records Decision No. 440 (1986) at 2 (predecessor statute).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID# 38568

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