



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 17, 1996

Mr. Merrill E. Nunn
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR96-0566

Dear Mr. Nunn:

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# 39364.

The Amarillo Police Department (the "department") received an open records request for certain records pertaining to a particular traffic accident. Specifically, the requestor seeks the name, address, and phone number of every witness to the accident, all statements or other records provided by each witness, and all photographs taken at the accident site and of the vehicles involved. You inform this office that the department possesses no responsive photographs. You contend, however, that the remaining requested information is exempted from public disclosure at this time pursuant to the "law-enforcement" exception, section 552.108 of the Government Code, because charges have been filed and are currently pending against the driver of one of the vehicles involved in the accident.

Traditionally, when applying section 552.108, our office has distinguished between cases that are under active investigation or prosecution and those that are closed. Generally, in cases that are under active investigation or prosecution, this section exempts from disclosure all investigatory information, including the identity of witnesses and their statements. *But see 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) (certain "front page offense report information" is public); 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-466 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

Assuming the department did not attach the requested witness statements to the "Texas Peace Officer's Accident Report" it submitted to the Department of Public Safety in connection with this matter,¹ we conclude that the department may withhold the witnesses' identities and statements pursuant to section 552.108 during the pendency of the legal proceedings.

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/ch

Ref.: ID# 39364

Enclosures: Submitted documents

cc: Mr. Jackson Walls
Attorney at Law
P.O. Box 9698
Amarillo, Texas 79105
(w/o enclosures)

¹Section 47 of article 6701d, V.T.C.S., provides that copies of accident reports must be made available to, among others, any person who provides two of the following three categories of information about the accident: 1) the date of the accident, 2) the name of any person involved in the accident, or 3) the specific location of the accident. The Department of Public Safety ("DPS") grants a qualified right of access to all attachments to accident reports it receives as it does to the accident report themselves. Assuming the requestor of the information at issue could provide such information to DPS, the accident report and all accompanying attachments would be subject to required public disclosure. Thus, the department would have waived its section 552.108 protection by submitting to DPS the requested witness statements along with the accident report.