



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 18, 1996

Ms. Kathleen Weisskopf
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR96-0571

Dear Ms. Weisskopf:

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# 39494.

The City of Arlington (the "city") received a request from the Texas Department of Transportation (the "department") for copies of photographs taken in connection with an automobile accident that resulted in two traffic fatalities. You have submitted to this office as responsive to the request a representative sample of the requested photographs.¹ Because the photographs directly pertain to the pending criminal prosecution of one of the drivers, you seek to withhold the photographs from public disclosure pursuant to sections 552.103 and 552.108 of the Government Code.²

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

¹In reaching our conclusion here, we assume that the "representative sample" of photographs submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We assume for purposes of this ruling that the department is requesting the photographs pursuant to the Open Records Act and therefore do not address whether the department is authorized to receive the photographs through an inter-governmental transfer of information. *See generally* Attorney General Opinions H-917 (1976), H-683 (1975).

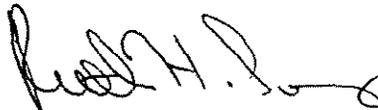
(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [and;]

(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.

Evidence obtained at the scene of a crime is presumptively excepted by section 552.108 during the pendency of the criminal investigation and prosecution. Attorney General Opinion MW-446 (1982). However, once criminal proceedings have been concluded, so that it is no longer a part of an active investigatory file, the custodian of the records must show that the release of the requested information "will unduly interfere with law enforcement and crime prevention." *Id.* at 2. Because the criminal prosecution is currently pending in connection with this matter, the city may withhold the requested photographs pursuant to section 552.108 until such time that the photographs are entered into evidence during the criminal trial or until the prosecution of this matter has concluded.³

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 39494

Enclosures: Submitted photographs

³Because the city may withhold the requested photographs at this time under section 552.108, we need not address your section 552.103 claims.

cc: Sandy Thorton
Tort Section
Texas Department of Transportation
P.O. Box 149148
Austin, Texas 78714-9148
(w/o enclosures)