



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 1, 1996

Mr. Jerry E. Drake, Jr.
Assistant City Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201

OR96-0646

Dear Mr. Drake:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38675.

The City of Denton (the "city") received a request for "[a]ny and all information and files regarding the murder of one Bobby Turner at 2800 Ft. Worth Drive in the city of Denton, Texas; occurring on or about 9-20-93." You claim the requested information may be excepted from required public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.108 provides that:

(a) Information held by 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). We stress, however, that it is the type of information that is determinative, not the location of the information on the literal "first page" of an offense report.

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records 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). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

You state that although the two perpetrators in the murder case were tried and convicted, "[b]oth felons have appealed their convictions, which are still pending consideration by the Court of Appeals at this time." You contend that "[i]f one or both convictions were overturned on appeal on technical grounds, the premature release of the [requested information] would hamper prosecution efforts to the same degree on retrial as they would pending the original trial." We agree. Accordingly, except for the type of information deemed public by the *Houston Chronicle Publishing Co.* case, the city may withhold the requested information under section 552.108 of the Government Code.

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

Ref: ID# 38675

Enclosures: Submitted documents

cc: Ms. Dana Miller, Owner
Zenith Investigations
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(w/o enclosures)