



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 18, 1996

Mr. Patrick S. Dohoney  
Assistant District Attorney  
Office of the District Attorney  
Tarrant County, Texas  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR96-0977

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40307.

The Tarrant County Sheriff's Office received a request for the arrest report pertaining to an alleged DWI. You contend that the requested information should be protected from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

Section 552.108 excepts from disclosure:

- (a) Information held by 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 . . . .

When applying section 552.108, this office distinguishes between information relating to 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)

at 3-4. Once a case is closed, however, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See Open Records Decision No. 553 (1990) at 4 (and cases cited therein).

You state that the requested information relates to an active investigation file of the Tarrant County District Attorney's Office. We have examined the information at issue and conclude that, except for "first page offense report" material contained therein, which *Houston Chronicle* held to be open, you may withhold it under section 552.108. See *Houston Chronicle Publishing Co.*; Open Records Decision No. 127 (1976). We stress that you must release the type of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of its location within an investigation file. The content of the information determines whether it must be released, not its literal location on the first page of an offense report.

You also seek to withhold under section 552.101 criminal history record information ("CHRI") obtained from the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC").

The dissemination of CHRI obtained from the NCIC network is limited by federal law. See 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the Department of Public Safety ("DPS") or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. See generally *id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, see Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. In addition, as for CHRI generated within Texas, common-law privacy prohibits the disclosure of such information to anyone other than the subject of the information. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (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 Nos. 616 (1993), 565 (1990). We have reviewed the CHRI at issue and conclude that it must be withheld from public disclosure under section 552.101 of the Government Code.<sup>1</sup>

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<sup>1</sup>As we resolve this matter under sections 552.101 and 552.108, we need not address your arguments against disclosure under section 552.103.

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 may 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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 40307

Enclosures: Submitted documents

cc: Mr. Sam R. Patterson  
3508 Williamson Road  
Crowley, Texas 76036  
(w/o enclosures)

