



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 16, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1156

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39652.

The Harris County District Attorney (the "district attorney") received a request for all documents pertaining to *State v. Todd Frank Lenderman* and *State v. Bart Alan Medley*. You state that the district attorney will release items previously filed with the clerk of the criminal trial court or items authored by the defendants. You also state that two of the cause numbers have been destroyed. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

We note that a governmental body is not required to obtain information not in its possession or to take affirmative steps to create new information. Open Records Decision Nos. 558 (1990), 534 (1989). With regard to cause numbers 8921430 and 9130286, the district attorney need not respond to the request for information.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of

an offense report is generally considered public.¹ *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). We conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure.²

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39652

Enclosures: Submitted documents

cc: Mr. Michael B. Charlton
Law Offices of Michael B. Charlton
4515 Yoakum
Houston, Texas 77006
(w/o enclosures)

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

²The requestor argues that section 552.108 should not apply to information that was previously released to defendant's counsel in connection with the trial. However, as this office noted in Open Records Decision No. 579 (1990), exchanging information among litigants in informal discovery is not a "voluntary" release of information for purposes of section 552.007 of the Government Code.