



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

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

OR96-1291

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# 35950.

The Harris County District Attorney (the "district attorney") received a request for the district attorney's file for cause number 205,496, styled *State v. Clarence O'Hern*. You state that the district attorney's file was destroyed pursuant to routine procedure.¹ However, certain documents were retained. You also state that the district attorney will release a motion to dismiss and the indictment, which were both previously filed with the clerk of the criminal trial court. However, 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.

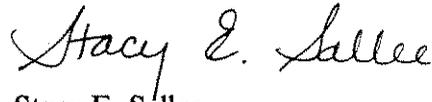
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters 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

¹We note that a governmental body is not required to obtain information not in its possession or to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision Nos. 558 (1990), 534 (1989).

an offense report is generally considered public.² *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, with the exception of first page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure.

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# 35950

Enclosures: Submitted documents

cc: Mr. Clarence M. O'Hern
158 Lakeview Drive
New Waverly, Texas 77358
(w/o enclosures)

²The 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*.