



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 2, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-1378

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40616.

The Texas Department of Criminal Justice (the "department") received an open records request for "the incident report and any other information concerning the circumstances of the assault, response actions taken by prison guards, disciplinary proceedings against responsible individuals, and any injuries sustained" concerning an incident involving a department inmate. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You have submitted samples of the information requested.¹ We have considered the exceptions you claimed and have reviewed the sample documents.²

¹In reaching our conclusion, we assume that the "exemplars" submitted to this office are representative samples of the documents requested. Furthermore, we assume that the "representative samples" are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). 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.

²Although the department originally claimed that the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code, the department did not offer any arguments as to why these exceptions would apply to any of the requested information. Therefore, we consider these exceptions waived. Gov't Code §§ 552.301, 552.303.

Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(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].

Section 552.108 excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. You assert that the department is conducting an investigation into the alleged incident involving this inmate and, therefore, you seek to withhold the requested information pursuant to section 552.108 of the Government Code. We conclude that the department may withhold the requested records from required public disclosure pursuant to section 552.108 of the Government Code.³ See *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996).

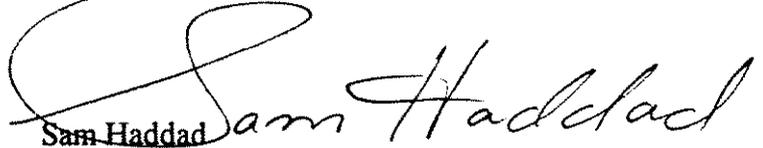
We note, however, that information normally found on the front page of an offense report is generally considered public.⁴ *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note also that since section 552.108 is discretionary with the governmental entity asserting the exception, you may choose to release all or part of the other information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

³The department also claims that section 552.117 of the Government Code excepts the home addresses, home telephone numbers, and social security numbers of department employees from disclosure. As the department is no doubt aware, section 552.117 was amended in the last legislative session to remove the automatic exemption for department employees. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132 (Vernon) (codified as Gov't Code § 552.117). Therefore, only if the employees have made the election to keep this information confidential under section 552.024 prior to the receipt of the request or if the employees are "peace officers" as defined by article 2.12 of the Code of Criminal Procedure must the department withhold this requested information. Otherwise, the department may not withhold this information. We note that we did see some of this information in the submitted materials.

⁴The 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*.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁵ 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,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 40616

Enclosures: Submitted documents

cc: Mr. Robert M. Combs
Attorney at Law
332 East Rosewood, No. 1
San Antonio, Texas 78212
(w/o enclosures)

⁵As we resolve your request under section 552.108, we need not address your claimed exceptions under sections 552.101 and 552.103 at this time.