



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1996

Mr. Donald W. Allee
City Attorney
City of Pharr
801 Nolana, Suite 315
McAllen, Texas 78504

OR96-1551

Dear Mr. Allee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37445.

The City of Pharr Police Department (the "department") received a request to view the department's "latest completed Offense Report Log." You contend that this information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You have submitted a representative sample to this office for our review.¹

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). However, information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing*

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is 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.

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*.

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 the information contained on the offense report log is no different than that information which *Houston Chronicle* expressly held to be public. See Open Records Decision No. 394 (1983). Therefore, you may not withhold any of the requested information under section 552.108 of the Government Code.

You also assert that some of the information contained in the offense report log is excepted under section 552.101 in conjunction with the constitutional or common-law right to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. See Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional privacy doctrine is far narrower than that under the common-law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

From the representative sample submitted, it is not apparent whether any of the information would infringe upon any individual's constitutional or common-law right of privacy. This office stated in Open Records Decision No. 394 (1983):

An exception might arise in instances in which the withholding of names of, or identifying information pertaining to, complainants or informants would be justified. As this office observed in Open Records Decision No. 339 (1982), for example, the release of such information may infringe upon a complainant's common-law right of privacy.

Questions relating to the application of the common-law right of privacy are necessarily factual in nature and can only be resolved on a case-by-case basis. If you reasonably conclude that a particular complainant's name and identifying information pertaining to that complainant must be withheld to protect the complainant's common-law right of privacy, you may withhold that information. Of course, if a particular requestor wishes to do so, he may file a formal request for that information, in which event this office would make the final determination as to whether this information may be withheld.

Thus, we cannot rule on the applicability of section 552.101 and the constitutional or common-law right of privacy to any information contained in the entire offense report log held by the department. Absent a demonstration that the release of any particular information would infringe upon an individual's right to privacy, the offense report log must be released in its entirety.

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 that reads "Todd Reese". The signature is fluid and cursive, with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 37445

Enclosure: Submitted document

cc: Ms. Adriene Anderson
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(w/o enclosure)