



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1996

Mr. Ron Pigott  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR96-1700

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101110.

The Texas Department of Public Safety (the "department") received a request for all of its files pertaining to Patrick Henry Early, including a particular drug case handled by officer Dan Easterwood. You assert that the referenced drug case file is excepted from required public disclosure based on sections 552.103 and 552.108 of the Government Code. You do not mention in your letter to this office any other files pertaining to Patrick Henry Early.<sup>1</sup>

Section 552.108 of the Government Code 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*, 924 S.W.2d 920 (Tex. 1996). Information normally found on the front page of an offense report is generally considered public. *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);

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<sup>1</sup>We note that you submitted to this office documents that appear to be nonresponsive to the request. We assume these were mistakenly submitted and do not rule on the public disclosure of this information.

Open Records Decision No. 127 (1976).<sup>2</sup> 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.

We consider whether section 552.103 applies to the front page offense report information. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). When the opposing party in the litigation has seen or had access to any of the information in requested records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You inform us that the investigation conducted by Sergeant Dan Easterwood resulted in the arrest and prosecution of not only Mr. Early, but also Mr. Richard James Bernard on criminal conspiracy charges. You say the requested file contains details pertaining to the detection and investigation of the arrests of these individuals. You also explain that Ms. Pam Berdanier of the Dallas County Attorney's office has told the department that she will represent the state in Mr. Bernard's appeal of his conviction.

We assume that the defendants in the criminal case were informed of the front page offense report information when they were brought before a magistrate and/or during the trial. We therefore conclude that the department may not withhold the front page offense report from the requestor pursuant to section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

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<sup>2</sup>The following basic information is generally available to the public: the offense committed, location, identification and description of complainant, premises, time of the occurrence, property involved, vehicles involved, weather, details of the offense in question, and the names of the investigating officers. *See* Open Records Decision No. 127 (1976).

We are resolving this matter with this 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,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 101110

Enclosures: Submitted documents

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(w/o enclosures)