



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 6, 1996

Ms. Elaine S. Hengen  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR96-2056

Dear Ms. Hengen:

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# 101921.

The City of El Paso (the "city") received a request for the personnel files of several police officers as well as a certain Internal Affairs Department ("IAD") Investigation Report. The IAD Report is the result of an investigation of an incident involving Mr. Ernesto Sapien that occurred on February 24, 1996. You inform us that you are seeking clarification from the requestor about his request for the personnel files. You state that the city has released to the requestor the incident report from the criminal investigation. You assert that documents pertaining to the criminal investigation as well documents pertaining to the internal affairs investigation are excepted from required public disclosure based on section 552.108 of the Government Code. You have submitted representative samples of the information you seek to withhold from disclosure.<sup>1</sup>

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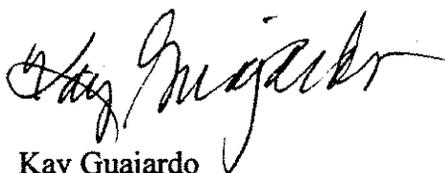
<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

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); Open Records Decision No. 127 (1976).

We conclude that section 552.108 applies to all of the information pertaining to the pending criminal investigation. The IAD file contains some information that pertains to the pending criminal investigation. However, as we believe that portions of the IAD file only indirectly pertain to the criminal investigation, we conclude that section 552.108 does not apply to the IAD file in its entirety. See *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment), Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). We have marked the information in the IAD file that the city may not withhold from the requestor based on section 552.108.

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# 101921

Enclosures: Marked documents

cc: Mr. Francisco F. Macias  
Attorney  
1001 North Campbell  
El Paso, Texas 79902  
(w/o enclosures)