



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Robert G. Schleier, Jr.
City Attorney
116 N. Kilgore Street
Kilgore, Texas 75662

OR96-2233

Dear Mr. Schleier:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101985.

The City of Kilgore (the "city") received a request for information concerning an automobile accident. The requestor, who represents an individual injured in the accident, has specifically asked for information concerning witnesses to the accident. You state that a copy of the accident report was provided to the requestor. You explain that the police officer who investigated the accident wrote down the name and telephone number of a witness to the accident in his own personal notebook "which he keeps in his shirt pocket." The handwritten information is responsive to the request and has been submitted to this office for review.

You assert that the handwritten notes are the personal property of the police officer who investigated the accident and are thus not subject to the provisions of chapter 552. Information is generally public if it is collected, assembled, or maintained under a law, ordinance, or in connection with the transaction of official business (1) by a governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it. In Open Records Decision No. 626 (1994), members of a departmental promotion board took handwritten notes while interviewing candidates for promotion, as an aid in evaluating candidates. In determining that the notes at issue were subject to chapter 552, this office stated that the notes were clearly created in connection with the transaction of official business and thus subject to the provisions of chapter 552. Open Records Decision No. 626 (1994); *see* Open Records Decision Nos. 635 (1995) at 3 (information not exempted from chapter 552 due to mere fact that one person rather than governing body as a whole possess information), 327 (1982) at 2 (handwritten notes made in work capacity were subject to chapter 552). Since the notes

at issue were created and apparently maintained in connection with the transaction of the police officer's official investigation of the accident, the notes at issue are subject to the provisions of chapter 552.

You contend that releasing the notes could violate the privacy interests of the witness to the accident. In *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court recognized a common-law right of privacy in information which is highly intimate or embarrassing to a reasonable person and of no legitimate concern to the public. Information that is protected by a right of privacy is confidential pursuant to section 552.101 of the Government Code. However, an accident witness' name and telephone number is not the type of information that is generally protected by privacy. Open Records Decision No. 455 (1987) at 7 (home addresses and home telephone numbers of private citizens not protected by right of privacy).

You also contend that the notes are excepted from disclosure pursuant to section 552.108 of the Government Code. 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." The accident report reflects that no charges were filed in connection with the accident. However, pursuant to the Texas Supreme Court decision in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), the investigating officer's notes are protected from disclosure by section 552.108 of the Government Code.¹

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 101985

¹In making this determination, we assume that the notes were not part of the accident report that was released to the requestor.

Enclosures: Submitted document

cc: Mr. John H. Waldie
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(w/o enclosures)