



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney's Office
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-2248

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37313.

The Harris County District Attorney's Office received a request for all information regarding Cause Nos. 9008402, 965977, and 625,344, all styled *State of Texas v. Roger Reyes*. With respect to the first two causes, you claim that those files no longer exist because they were destroyed pursuant to a destruction schedule approved by the director and librarian of the Texas State Library and Archives Commission. With respect to Cause No. 625,344, you claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, the requestor contends that because the records were disclosed to defense counsel, the District Attorney is not entitled to invoke the litigation exception to mandatory disclosure. In addition, you assert that the requested information is exempt from disclosure under sections 552.101 and 552.107. We have considered the exceptions you claim and reviewed the submitted information.

The Open Records Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). Because the District Attorney's Office has no records relating to Cause Nos. 9008402 and 965977, it does not have to comply with the request for all such information.

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*, 924 S.W.2d at 925. We note, however, that information normally found on the front page of an offense report is generally considered public.¹

¹The 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*.

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). Although section 552.103 provides that the District Attorney's Office no longer has a litigation interest to withhold information once the records are disclosed to defense counsel, the District Attorney still has a law enforcement interest in withholding the information. See Open Records Decision No. 579 (1990) (providing information to an opposing party in informal discovery is not selective disclosure for purposes of section 552.007). We therefore conclude that, except for front page offense report information,² section 552.108 of the Government Code exempts the requested records from required public disclosure. You may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 37313

Enclosures: Submitted documents

cc: Mr. Michael B. Charlton
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Houston, Texas 77006
(w/o enclosures)

²Section 552.103 cannot be invoked to withhold, from public disclosure, basic front page offense report information that has already been made available to the defendant in the criminal litigation. Open Records Decision No. 597 (1991). Neither is this basic information exempt from disclosure under either sections 552.101 or 552.107.