



Office of the Attorney General

State of Texas

December 9, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. John Steiner
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-2328

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102234.

The City of Austin (the "city") received a request for

1. All photographs of Pablo Zuniga or the scene of his death taken by APD
2. All written statements of any witnesses taken before the Notice of Claim, concerning the death of Pablo Zuniga
3. The police investigative file concerning the death of Pablo Zuniga
4. The autopsy of Pablo Zuniga.

You assert that the requested information is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.¹

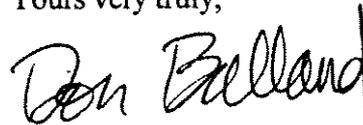
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is

¹You state that the city does not have a copy of the requested autopsy report in its custody. The Open Records Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). We note, however, that if the city does obtain a copy of the autopsy report, the exceptions within the Open Records Act will not protect it from disclosure. Crim. Proc. art. 49.25, § 11 (autopsy reports prepared by a medical examiner are expressly made public); Open Records Decision No. 529 (1989); see Open Records Decision No. 462 (1987).

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). We note, however, that 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). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. *See Houston Chronicle*, 531 S.W.2d at 187; *cf.* Open Records Decision No. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The requested information at issue deals with the detection, investigation, or prosecution of crime. We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure.²

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 any questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 102234

Enclosures: Submitted documents

cc: Mr. Thomas J. O’Meara, Jr.
O’Meara and Gabbay
103 East Milton Street
Austin, Texas 78704
(w/o enclosures)

²Because we are able to make a determination under section 552.108, we do not address your argument under section 552.103.