



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1996

Mr. John D. Kimbrough
County Attorney
Orange County Courthouse
Orange, Texas 77630

OR96-2436

Dear Mr. Kimbrough:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33962.

The City of Orange and the Orange Police Department (collectively the "city") received two requests for information relating to a capital murder case. The first request asks for information pertaining to the investigation of an alleged suspect in the case. The request specifically seeks all information pertaining to or arising from 1) any oral or written interviews or any other communications with the suspect; 2) any oral or written statements made by the suspect or any other witness, law enforcement official, or police informant that are in the possession of the Orange County District Attorney's office; 3) any background investigation or witness interviews conducted by the District Attorney's office or any law enforcement agency; and 4) any and all proceedings in the capital murder case. The second request asks for all information pertaining to the capital murder case, including 1) the investigation of the criminal incident; 2) the trial of the underlying matter; and 3) the investigation of post-trial proceedings including motions for new trial. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter dated June 6, 1995, that you had failed to submit the information required by section

552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

Although you stated that "[t]he complete investigative and prosecutorial file on the Bobby Joe Wills Capital Murder case consists of thousands of pages of reports, statements and internal communications," you provided our office with only one document, a copy of the alleged suspect's statement.¹ We assume that the submitted information is a representative sample of the requested information.²

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 v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report or an arrest report is generally considered public.³ *Houston Chronicle Publ'g 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 therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the submitted records from required public disclosure.⁴ You may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

¹The Chief of Police stated that the Orange Police Department has no documents concerning the alleged suspect, and therefore, does not have to provide such documents. However, the police chief further stated that such documents did originate from the department and filed with the County Attorney's Office. Indeed, your office did provide us with a copy of the alleged suspect's statement.

²In 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). 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.

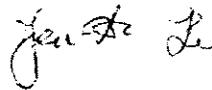
³The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

⁴The requestor contends that the requested information should be disclosed because defense counsel had access to the information pursuant to the District Attorney's pretrial open file policy and cites to several open records decisions. However, those decisions were decided based on the "litigation exception" of section 552.103 of the Government Code. Although there is no litigation interest to withhold information once the records are disclosed to opposing counsel, a law enforcement interest in withholding the information still remains. See Open Records Decision No. 579 (1990) (providing information to opposing party in informal discovery is not selective disclosure for purposes of section 552.007 of the Government Code).

Having resolved the request under section 552.108, we need not address your work product claim.

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# 33962

Enclosures: Submitted documents

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