



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1996

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-2268

OR96-2439

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102799.

The City of Austin (the "city") received a request for a copy of "all documents relating to a specific sexual assault and its subsequent investigation. However, the city seeks to withhold the requested information based on section 552.108 of the Government Code. You enclosed representative samples of the information the city seeks to withhold.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 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 (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);

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records 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.

Open Records Decision No. 127 (1976). Although the type of information that is considered to be front page offense report information should be provided to the requestor, section 552.108 provides that you may withhold the remaining information from disclosure.² Additionally, we observe that you may choose to release all or part of the information at issue that is not otherwise confidential by law.³ Gov't Code § 552.007.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 102799

Enclosures: Submitted documents

cc: Ms. Katherine A. Staton
300 Convent Street, Suite 2600
San Antonio, Texas 78205-3796
(w/o enclosures)

²Please note that any front page information that identifies the victims of sexual assault must be withheld under common-law privacy. See Open Records Decision No. 339 (1982).

³We note that there is some indication that a search warrant may have been executed. Additionally it is noted that a probable cause affidavit must support a search warrant. See Code Crim. Proc. Art. 18.01(b). If a probable cause affidavit was made to support a search warrant, the affidavit is public by statute if it has been executed. *id* If such an affidavit exists and it was filed with the court, it has become a public record and may not now be withheld. *Star-Telegram, Inc. V. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the city may not withhold an executed search warrant from required public disclosure under section 552.108 of the Government Code. If the affidavit was not filed with the court, it is addressed together with the other submitted information under section 552.108.