



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1997

Mr. Larry S. Crawford
Captain Special Services
Ector County Sheriff's Office
P.O. Box 2066
Odessa, Texas 79760

OR97-0181

Dear Mr. Crawford:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 103338.

The Ector County Sheriff's Office (the "sheriff") received two requests under the Texas Open Records Act for information pertaining to a gas line explosion that the sheriff is investigating. Although it is not clear on what dates the sheriff received the two open records requests, your letter to this office, dated October 24, 1996, reveals that you did not request a decision within the ten days of receipt of the first request, dated October 7, 1996, as required by section 552.301(a) of the Government Code. Additionally, although your request for a decision with regard to the second open records request, dated October 19, 1996, would at first appear to meet the ten-day requirement, the postmark on the envelope containing your decision request reveals that you did not mail your request to this office until November 1, 1996, thus bringing into question the timeliness of your request for the October 19 request. Gov't Code § 552.308 (timeliness of action by mail).

We note at the outset that some of the information that you have submitted to this office may not properly be considered to be within the ambit of the two open records requests. In your initial letter to this office you explain:

This case is still in its beginning stages of a complete investigation and as the enclosed copy of those reports that have been received so far indicates, most of the initial investigation was written and submitted to this office well after both requests for TORA information.

In defining "public information," section 552.002 of the Government Code provides:

(a) In this chapter, 'public information' means information that is *collected, assembled, or maintained* under a law or 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. [Emphasis added.]

Clearly inherent in this definition is the notion that information is not within the purview of the Open Records Act if the information does not exist when a governmental body receives an open records request. See Open Records Decision No. 342 (1982) at 3 ("Open Records Act applies only to information in existence, and does not require the governmental body to prepare new information"). Consequently, to the extent that the open records requests seek information that the sheriff or his employees did not possess at the time the respective requests were received, the requests cannot be deemed proper for information that was created after the dates the requests were received. See Attorney General Opinion JM-48 (1983).

We now address whether the sheriff must release the responsive information that existed at the time the open records requests were received. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

With regard to the October 7 open records request, you have shown a compelling reason for withholding from the public only certain criminal history information, which is made confidential by statutory law. See Gov't Code § 411.089(b)(1) (criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose). Consequently, the sheriff must withhold this information.

You have not advised us of the precise dates on which the sheriff received each of the two requests, nor are we aware of the precise dates on which the information at issue was created by the sheriff's personnel. Consequently, we cannot pinpoint the date on which the respective ten-day periods began to run with regard to particular information. Because of the presumption of openness, the sheriff must release to both requestors all responsive information that the sheriff or his personnel held on the date that the first open records request was received. However, for the same reasons discussed above, the sheriff may withhold all information created after the receipt of the second open records request because such information cannot be considered subject to either the first or second request.

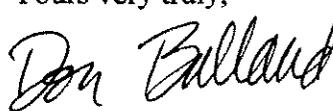
As noted above, it is unclear to this office whether your request for an open records decision was timely with regard to the second open records request received by the sheriff. If the sheriff received the October 19 request prior to October 22, 1996, your request was untimely, and all responsive information held by the sheriff or his employees on the date of receipt must be released to the second requestor except as discussed above. In the event, however, that the sheriff received the October 19 request on or after October 22, 1996, we will discuss below whether the sheriff may withhold information created between the dates of receipt of the first and second requests.

You contend the information is excepted from required public disclosure by, among other exceptions, 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.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the information created between the time of the first and second requests comes within the purview of section 552.108, we conclude that most of that information may be withheld under this section.

We note, however, that information normally found on the front page of an offense/incident 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 types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the incident report. Although section 552.108 authorizes you to withhold the remaining information from disclosure, the sheriff may choose to release all or part of the information that is not otherwise confidential by law. *See* 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

Ref: ID# 103338

Enclosures: Submitted records

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