



## Office of the Attorney General

State of Texas

April 10, 1997

DAN MORALES  
ATTORNEY GENERAL

Mr. Kevin D. Pagan  
Assistant City Attorney  
P.O. Box 220  
McAllen, Texas 78505-0220

OR97-0755

Dear Mr. Pagan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105161.

The City of McAllen (the "city") received a request for the incident report involving a named individual. The requestor also seeks the information through a subpoena duces tecum. You claim that the requested information is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Initially, we note that the subpoena was addressed to the custodian of records for the McAllen Police Department in connection with a civil case that is currently pending before a Texas District Court. Pursuant to the Texas Rules of Civil Procedure, this court is the appropriate authority before whom to make your arguments as to why the city contends it is not required to produce the subpoenaed documents and information. No provision of the Open Records Act controls a litigant's discovery rights in civil litigation. Attorney General Opinion JM-1048 (1989). Section 552.005 of the Government Code provides that the Open Records Act does not affect the scope of discovery under the Texas Rules of Civil Procedure. *See id.* (Open Records Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings); *see also* Letter Opinion No. 95-025 (1995) (Open Records Act not applicable to production of information pursuant to a subpoena under chapter 24 of the Code of Criminal Procedure). Therefore, we are unable to issue a decision as to whether the requested documents must be disclosed pursuant to the subpoena.

The requestor, however, also appears to make a request for the incident report under the Open Records Act. To this end, you assert that the city may withhold the requested information pursuant to section 552.108. 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 is generally considered public. *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). 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; Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The documents at issue deal 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, although you may choose to release all or part of the information at issue 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 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/ch

Ref: ID# 105161

Enclosures: Submitted documents

cc: Ms. Kelly Gonzalez  
323 West Cano #201  
Edinburg, Texas 78539  
(w/o enclosures)