



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 1, 1997

Ms. Leah Curtis Morris  
Law Offices of Harold F. Curtis, Jr.  
2708 Washington Street  
Greenville, Texas 75401

OR97-2218

Dear Ms. Morris:

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# 108969.

The Greenville Police Department (the "department"), which you represent, received an open records request for all records pertaining to Offense Number 9347669, a reported homicide. You note that although this office previously ruled on the public nature of these records in Open Records Letter No. 96-1683 (1996), the criminal investigation of the homicide was pending at that time. You now inform us that the prosecution of the homicide has resulted in a murder conviction and that no appeals in this case are currently pending. You state that the department has released to the requestor some of the requested information. You seek to withhold, however, portions of the released documents and other entire documents pursuant to section 552.108 of the Government Code.<sup>1</sup>

Section 552.108 of the Government Code, as amended by the Seventy-fifth Legislature, exempts from required public disclosure

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

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<sup>1</sup>Although you also argue that certain records the department obtained through the TCIC and NCIC are exempted from public disclosure pursuant to section 552.101 of the Government Code, this office considers our ruling in Open Records Letter No. 96-1683 (1996) as a "prior determination" for purposes of Government Code section 552.301(a) with regard to those particular records. The department therefore may rely on our previous ruling with regard to the TCIC and NCIC records.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An 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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Because you have informed us that the records at issue pertain to a closed investigation that resulted in a criminal conviction, we conclude that none of the information at issue may be withheld pursuant to section 552.108(a)(2) or 552.108(b)(2). Although you contend that the identities of witnesses, their statements, and other information revealing investigative techniques may be withheld under section 552.108, you have not demonstrated how the release of this information *in this particular instance* would interfere with the detection, investigation, or prosecution of crime; consequently, none of the information you have marked may be withheld pursuant to section 552.108(a)(1) or section 552.108(b)(1). Finally, because you have made no argument as to the applicability of section 552.108(a)(3) or section 552.108(b)(3), we conclude that you have waived the protection of those subsections.

The department therefore may not withhold any of the requested information pursuant to section 552.108. Consequently, except for the TCIC and NCIC information, all of the requested information must be released. 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/RWP/rho

Ref.: ID# 108969

Enclosures: Submitted documents

cc: Ms. Theresa Bearden  
225 W. I-35, #201  
Garland, Texas 75043  
(w/o enclosures)