



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1997

Ms. Diane Eagleton
Supervisor, Records Division
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR97-2324

Dear Ms. Eagleton:

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# 109466.

The North Richland Hills Police Department (the "department") received two requests for information related to offense report number 96084187, as well as to a homicide which occurred on June 19, 1997. You assert that except for the front page of the offense report, the information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your argument and have reviewed the information submitted.

Initially, we note that the documents contain a search warrant and an affidavit in support of the warrant. These documents were signed by a magistrate and appear to be court records. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). Furthermore, if the affidavit was made to support a search warrant, the affidavit is public by statute if it has been executed. *See Code Crim. Proc. art. 18.01(b)*. Therefore, the department may not withhold an executed search warrant affidavit from required public disclosure under section 552.108 of the Government Code.

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (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.

You state that there is an ongoing investigation involving possible criminal conduct and that the case has been referred to the Tarrant County District Attorney's office and returned to your office for additional investigation. As the requested information relates to a pending criminal investigation, we therefore find that release of the requested information would interfere with the detection, investigation, or prosecution of crime and thus, it is excepted from disclosure under section 552.108.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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 offense report. Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 109466

Enclosures: Submitted documents

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