



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 14, 1998

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR98-0955

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115059.

The Arlington Police Department (the "department") received a request for certain offense reports. You state that three reports are responsive to this request. You inform us that the department has released to the requestor the front page of two of the reports and a third report in its entirety. You ask whether the remaining portions of the two reports are excepted from disclosure under section 552.101 and 552.108 of the Government Code.

Section 552.101 excepts from required public disclosure information that is deemed confidential by law, including information deemed confidential by statute. You raise section 261.201 of the Family Code, which reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We do not believe that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Accordingly, the department may not withhold the information from disclosure based on section 552.101.

Section 552.108 of the Government Code reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 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;

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

(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 is excepted from the requirements of Section 552.021 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;

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

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You inform us that one of the reports, Exhibit B, "remains open pending further developments." We therefore believe the release of this report "would interfere with detection, investigation, or prosecution of crime." Section 552.108 is inapplicable to "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of such basic information, the department may withhold the report from disclosure based on section 552.108(a)(1).

As for the final report, Exhibit C, we find that the department has not established the applicability of section 552.108. You inform us that the suspect was arrested and referred to the county juvenile justice court for final disposition. This information does not establish that the release of the information would interfere with the detection, investigation, or prosecution of crime, as we are not informed of the status of the case. Nor have you asserted that the information "deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Information relating to criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication may be withheld under subsection (a)(2) and (b)(2) of section 552.108. However, here, we are not informed of the result, if any, in this case. The department has not asserted that the report was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that the report reflects the mental impressions or legal reasoning of an attorney representing the state. Consequently, the department may not withhold exhibit C from the requestor based on section 552.108.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref: ID# 115059

Enclosures: Submitted documents

cc: Mr. Matt Tracy
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(w/o enclosures)