



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 27, 1998

Capt. Robert Taylor
Amarillo Police Department
200 S.E. Third Avenue
Amarillo, Texas 79101-1514

OR98-1055

Dear Captain Taylor:

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# 114362.

The Amarillo Police Department (the "department") received a request for incident report number 97-111365. You assert that the information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

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

(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.

(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 [public disclosure] 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 the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You assert that the report at issue is excepted from disclosure because "the case has not been adjudicated. The case has been concluded and closed with no further investigation or prosecution pending." Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. Upon review of the submitted documents, we note that the investigation resulted in no charges being filed and you assert this case is closed with no pending investigation or prosecution. Therefore, you may withhold the requested information from public disclosure under section 552.108(a)(2).

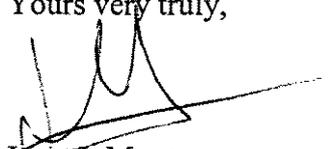
However, we note that basic information about an arrested person, an arrest, or a crime is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information, including the identification and description of the complainant, even if this information is not actually located on the front page of the offense report.¹ *See generally*

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*. Additionally, we note in response to your contention that the complainant name should be withheld, that Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act. Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 (1990) at 5. Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 (1978) at 2. There are special situations in which front page offense report information may be held from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing undercover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how release of

Houston Chronicle Publ'g Co. v. City of Houston, 531 S.W.2d 177, 187 (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). Therefore, we conclude that, except for basic information, section 552.108(a)(2) of the Government Code excepts the requested information from public disclosure. Although section 552.108 authorizes you to withhold the information from public 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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/gle

Ref.: ID# 114362

Enclosures: Submitted documents

cc: Mr. Arun Sukkawala
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(w/o enclosures)

certain details would interfere with the undercover operation, which was ongoing and was expected to culminate in more arrests. Also, in Open Records Decision No. 333 (1982), this office agreed that certain front page arrest report information could be withheld from disclosure. The information in question identified certain individuals as being informants and potential informants. *Id.* at 2. Some of the front page information specifically identified individuals being considered by the vice division in targeting certain locations. *Id.*

Based upon the information provided to this office, we do not think that you have shown special circumstances sufficient to overcome the presumption of public access to front page information. In this matter, it is apparent from the review of the documents that the names of those allegedly being harassed are already known to the alleged culprit.