



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 19, 1998

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston- Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-2452

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118828.

The City of Houston Police Department (the "department") received a request for "all records, including without limitation the offense or incident report, all photographs audio recordings, video recordings or other documentation or tangible evidence" including "all call slips for calls for service to the Golden Corral," referenced by incident report number 076053798-F. In response to the request, you submit to this office for review an audio tape and Exhibits 2 and 3 which you assert are responsive. You state that the "Police Department will make available to the requestor the Public Release Information portion of the requested incident report."<sup>1</sup> However, you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code encompasses confidentiality provisions such as Family Code section 58.007. Section 552.101 excepts from disclosure "information

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<sup>1</sup>As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c); *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).

considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Release of some of the requested information is governed by section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records; and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Some of the submitted documents involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, we conclude that Exhibit 2 and the related audio tape are confidential pursuant to section 58.007(c) of the Family Code. Thus, the department must withhold this information from disclosure under section 552.101 of the Government Code.

As for the remaining information, we next consider whether section 552.108 protects any of the information submitted as Exhibit 3. Section 552.108, the “law enforcement exception,” exempts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation or prosecution of crime. Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 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. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that “Exhibit 3 reflects information that is not reflected on the public release portion of the offense report, i.e. the identity of the reportee.” You explain that the incident occurred on June 16, 1998 and “further investigation will be conducted in this case if/when new evidence or information becomes available.” Based on the submitted information and your arguments, we conclude that the requested information, contained in Exhibit 3, relates to an active criminal investigation and prosecution. Therefore, except for the information subject to release pursuant to *Houston Chronicle*, you may withhold Exhibit 3 under section 552.108(a)(1). *See* Open Records Decision No. 127 (1976).<sup>2</sup> Although

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<sup>2</sup>We note that in Open Records Decision No. 127 (1976), this office concluded that “identification and description of witnesses” and “Officer’s speculation as to suspect’s guilt” is information which is protected by section 552.108 of the Government Code.

section 552.108(a)(1) authorizes you to withhold this 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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/ch

Ref.: ID# 118828

Enclosures: Submitted documents

cc: Mr. Michael S. Beckwith  
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(w/o enclosures)