



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1998

Mr. Ted W. Hejl  
Attorney at Law  
P.O. Box 192  
Taylor, Texas 76574

OR98-3213

Dear Mr. Hejl:

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# 120580.

The Taylor Police Department (the "department"), which you represent, received an open records request for three items of information concerning a 1996 "Texas Rangers report" of the department. Specifically, the requestor asks for: 1) the "Texas Rangers report;" 2) "[a] copy of the letter from the Williamson County District Attorney that accompanied this report;" and, 3) "[a] copy of the response from the City of Taylor."<sup>1</sup> In response to the request, you submit to this office for review a copy of the records which you assert are responsive. You claim that the requested information is excepted from required public disclosure by section 552.108 of the Government Code and privacy. We have considered the exception and arguments you have raised and reviewed the submitted information.

As a preface to our discussion, we note that if the requested records overlap with any information which was the subject of our previous ruling in Open Records Letter No. 98-1460 (1998), then the department should withhold or release this information as directed in that ruling. However, we note that you have submitted certain information, specifically a 1995 investigation into allegations of official oppression, which appears to be responsive to

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<sup>1</sup>In his request letter, the requestor states that he has read a report which is part of this request. This situation raises a question of fact, and this office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). However, we note that a release to one requestor results in a selective disclosure, thus requiring the department to release the information at issue to all other requestors. Gov't Code §§ 552.007(a), 552.223; Open Record Decision Nos. 490 (1988) (governmental body may not practice selective disclosure).

the previous request, but not responsive to the pending request for information. In this ruling, we do not address the public disclosure of the 1995 investigation report, which does not appear responsive and which has been previously ruled on in Open Records Letter No. 98-1460 (1998).<sup>2</sup> Therefore, in this ruling we will only address the applicability of the claimed exceptions as for the requested 1996 investigation, into missing drugs, "drug fund" money, and disposition of guns from the department, and the related requested letters.

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

(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[.]

....

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

Gov't Code § 552.108. The requested report and related letters concern an investigation which was criminal in nature. You represent that the investigation report at issue was presented to "the grand jury [which] determined no misconduct or illegal activities occurred and, therefore, the investigation and Report did not result in a conviction or deferred adjudication." You contend the requested records are excepted from required public disclosure pursuant to section 552.108(a)(2) of the Government Code.<sup>3</sup>

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Because you inform us that the 1996

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<sup>2</sup>Consequently, we need not consider whether the "name of the complainant in the 1995 Report" is excepted from disclosure based on common-law privacy in conjunction with section 552.101 of the Government Code.

<sup>3</sup>You have cited to *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), to support your section 552.108 claim. We note that the *Holmes* court construed the former section 552.108, which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section discussed infra.

criminal investigation concluded and that the investigation did not result in criminal prosecution, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to the investigation report.

However, certain 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). Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." See generally *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). Therefore, we conclude that, except for basic front page information, the information at issue may be withheld under section 552.108(a)(2) of the Government Code, though the department also has discretion to release all or part of this information that is not otherwise confidential by law. 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,



Sam Haddad

Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 120580

Enclosures: Submitted documents

cc: Mr. Jimmie Blackwell  
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(w/o enclosures)