OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 7, 1999

Mr. Jay Garrett
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR99-0928

Dear Mr. Garrett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122604.

The City of Greenville Police Department (the "department") received a request for information relating to an alleged injury to an elderly person in a nursing home. You explain that the requested information is presently being reviewed by Hunt County Adult Protective Services for referral for prosecution and you claim it is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

You contend that section 552.108 protects certain portions of the department's records. Section 552.108 reads in pertinent part 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 required public disclosure] if:
>
> (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
>
> . . .
>
> (c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). This office considers such basic information to encompass the front page offense report information the court held to be public in *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).

You contend that this file contains information that relates to an investigation of alleged injury to an elderly person, and you ask to withhold this information under section 552.108(a)(1) of the Government Code. We presume from your arguments that a criminal investigation is ongoing and criminal prosecution may follow. As the requested information relates to a pending criminal investigation, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that most of the requested information you have marked may be withheld from the requestor based on section 552.108(a)(1). However, you may not withhold under section 552.108(a)(1) basic information from the offense report in accordance with *Houston Chronicle*, including the name of the individual identified as the "reporting party."[1] [2]Since we have resolved this request under section 552.108 of the Government Code, we need not address your claim under section 552.103 of the Government Code. [3]

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[1]This item of information is termed the "complainant" in *Houston Chronicle*.

[2]Although it is not clear as to the extent to which the records you submitted to this office have been used by the Texas Department of Human Services (TDHS), you do indicate that the Hunt County Adult Protective Services is presently reviewing this information and that reports 9804600 and 9815140 were transferred to TDHS on March 9, 1998 (yellow tab). Please note that if any such records were "used" in an investigation under subchapter E, they must be withheld from the public in their entirety pursuant to section 242.127 of the Health and Safety Code. Subchapter E provides for investigations conducted by the Department of Human Services or a "designated agency" into reports of abuse or neglect in institutions such as nursing homes. *See* section 242.121 (definition of "designated agency"). Section 242.127 provides:

> A report, record, or working paper used or developed in an investigation made under this subchapter and the name of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by [Texas Board of Human Services] or the designated agency.

[3]Basic information in offense report generally may not be withheld under section 552.103 of the Government Code. *See* ORD 362 (1983).

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.

Sincerely,

Rebecca L. Payne
Assistant Attorney General
Open Records Division

RLP\nc

Ref.: ID# 122604

Encl.: Submitted documents

cc: Ms. Suzanne C. Ekvall
Attorney at Law
13355 Noel Road, Suite 500
Dallas, Texas 75240
(w/o enclosures)