



November 9, 1999

Ms. Katherine Minter Cary
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-3185

Dear Ms. Cary:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129283.

The Office of the Attorney General (the "OAG") received a request for "a full copy of the police report" related to claim number VC 96123527. You submit to this office a memorandum and a representative sample of the requested information from the Crime Victims' Compensation Division of the Office of the Attorney General (the "CVC").¹ You assert that the requested 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.

CVC asserts that some of the requested information is protected by section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. As you have only submitted a representative sample of the requested records, we note that to the extent the responsive records contain confidential information, we advise you to exercise caution in releasing the information to the public. *See* Gov't Code § 552.352.

from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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;

(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.

....

(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.

Gov't Code § 552.108. 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.

CVC has represented to this office that the investigation at issue *did not* result in conviction or deferred adjudication and the submitted records should be withheld pursuant to section 552.108 of the Government Code. CVC has also provided to this office a letter from the San Jacinto County Criminal District Attorney which states that section 552.108 is applicable to the requested information “[a]s this case was no billed by the grand jury on May 21, 1999 [and] there was no final conviction or deferred adjudication.” Based on the attorney general’s right of access under article 56.38(d) of the Code of Criminal Procedure, and the assertion by CVC that the requested information pertains to a criminal case that “did not result in a conviction” or deferred adjudication, CVC may withhold some of the requested information under section 552.108. Attorney General Opinion H-917 (1976); Open Records Decision No. 516 (1989). We find that you have shown the applicability of section 552.108(a)(2) to a portion of the requested information, since the investigation *did not* result in conviction or deferred adjudication.

However, as you are aware, 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).

Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *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 the front page information, the OAG may withhold the requested information from disclosure under section 552.108(a)(2).²

Finally, we note that some of the submitted information is subject to access provisions outside of the Public Information Act. *See* Open Records Decision No. 598 at 1 (1991) (Public Information Act exceptions are not applicable to medical records). The submitted records contain some information which appears to consist of medical records concerning the requestor. Access to the submitted medical records is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* V.T.C.S. art. 4495b, § 5.08(j)(1) (outlining requirements for written authorization of release by patient or minor patient's parent). These medical records are confidential, with access provided only as outlined under the MPA. Open Records Decision No. 598 (1991).

²We note that Exhibit 3 contains two documents, which we have tagged, which consist of either "basic information" or information which was submitted as Exhibit 1, consisting of "copies of the request for information." Gov't Code § 552.108(c). Since it appears from the records that the information has already been released to the requestor, these two pages may not be withheld from the requestor at this time. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information to public).

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,

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/ljp

Ref.: ID# 129283

encl: Submitted documents

cc: Mr. Kenneth Ross Bagley
600 North Main Street
Bryan, Texas 77803
(w/o enclosures)