



# City of Austin

Founded by Congress, Republic of Texas, 1839

October 6, 1994

Honorable Dan Morales  
Texas Attorney General  
Supreme Court Building  
P.O. Box 12548  
Austin, Texas 78711-2548

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Opinion  
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RE: Open Records Request ID# 27844

RD-762

Dear General Morales:

The City of Austin requests a reconsideration of your opinion issued in letter ruling OR94-581. In that ruling you stated that once a conviction has been obtained, a case is considered closed for purposes of the section 552.108 law enforcement exception. Our original request for a ruling involved a case in which a defendant had been convicted of robbery and filed an appeal. At this time the appeal is still pending.

Section 552.108 excepts from disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime...

The records of a prosecutor often consist mainly of the records of a law enforcement agency which conducted the investigation. Therefore, the records of a law enforcement agency deal not only with the investigation of crime, but also with the prosecution of crime. If a criminal case is overturned on appeal, the case must be tried again and the law enforcement records would be used in the prosecution.

Section 552.103 of the Government Code is the litigation exception of the Open Records Act. That section relates to criminal and civil litigation and provides:

- (b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

If this section excepts information in criminal litigation from public disclosure until a defendant has exhausted all appellate and postconviction remedies in both state and federal court, then it is apparent that under this section, the case is not considered closed until those appeals are exhausted.

Honorable Dan Morales  
October 6, 1994  
Page -2-

We would argue that the same analysis should apply to exceptions under section 552.108 of the Open Records Act. Your letter ruling in OR94-581 requires that a case be considered as closed under the law enforcement exception of section 552.108 once a conviction has been obtained. This determination of when a case is closed is in direct conflict with the litigation exception allowed in section 552.103. The result of such reasoning would require records to be released under section 552.108 yet allow them to be excepted from disclosure under section 552.103.

In your letter opinion, you cite Open Records Decision Nos. 611 (1992) and 339 (1982) for the proposition that section 552.108 is applicable to a closed case only when the governmental body demonstrates that release of the information would unduly interfere with law enforcement. The decisions cited would be inapplicable if a case is considered as still being an open case while on appeal. In fact, they support the withholding of information so long as the case is open.

Open Records Decision 339 deals with an open case of aggravated sexual assault. It allows the section 552.108 exception for an open law enforcement case, which basically requires disclosure of only the front page of an offense report. It also expands the amount of information which may be withheld in cases of serious sexual assault based upon section 552.101 privacy interests.

Open Records Decision 611 applies to family violence investigations. It also allows the withholding of information related to any pending prosecution, except for the information generally found on the first page of an offense report.

We ask that you reconsider your opinion and consider that under section 552.108, the law enforcement exception, a case is not considered closed until all appellate and postconviction remedies have been exhausted. Such an interpretation would produce internal consistency within the Open Records Act between sections 552.103 and 552.108. To consider otherwise would unduly interfere with prosecution.

If you have any questions in this matter, please contact Assistant City Attorney Robert P. Rose at (512) 480-5047.

Sincerely,



Charles E. Griffith, III  
Deputy City Attorney

CG/RPR/cc B:\APD\1004MORA.LTR

cc: Janet E. Ritz, Attorney at Law  
Robert P. Rose, Assistant City Attorney