



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1993

Sheriff O. J. Stewart  
Liberty County Sheriff's Department  
2400 Beaumont Ave.  
Liberty, Texas 77575

OR93-776

Dear Sheriff Stewart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 22645.

The Liberty County Sheriff's Department (the "department") has received a request for "any and all investigative reports, photographs, and any other information [the department has] regarding the deaths of Leon Spears and Emma Rambo."<sup>2</sup> Although you do not raise any specific exceptions to the Open Records Act, we conclude from the language of your letter that you claim the requested information is excepted under section 552.108 of the Government Code.<sup>3</sup>

Section 552.108 excepts:

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<sup>1</sup>We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>You did not provide this office with any photographs. For purposes of this ruling, we will assume no photographs exist that would be responsive to the request. *See* Open Records Decision No. 572 (1990) (Open Records Act applies only to information in existence and does not require a governmental body to prepare new information).

<sup>3</sup>For future reference, we note that under the Open Records Act, all information held by governmental bodies is open unless it falls within one of the act's specific exception to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Where a governmental body fails to indicate an applicable exception, the information in question is presumed to be open. Open Records Decision Nos. 565 (1990); 325, 321 (1982). If an agency does not establish how and why an exception applies to requested information, there is no basis on which to pronounce it protected. Open Records Decision No. 363 (1983). The act does not require that this office raise and consider exceptions that you have not raised.

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

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law.<sup>4</sup> Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3. The names and statements of witnesses may be withheld if it is determined necessary in order 1) to protect witnesses from intimidation or harassment; or 2) to harm the prospects of future cooperation. Open Records Decision No. 397 (1983).

You do not claim that the requested information "would unduly interfere with law enforcement and crime prevention" nor do you indicate how disclosure of the requested information would subject the witnesses to possible intimidation or harassment.<sup>5</sup> Accordingly, you may not withhold the requested information under section 552.108 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/LBC/rho

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<sup>4</sup>Because you do not indicate otherwise, we assume the investigation at issue is closed.

<sup>5</sup>We fail to see how the witnesses would be intimidated or harassed by the alleged offender when the offender is deceased.

Ref.: ID# 22645

Enclosures: Submitted documents

cc: Mr. Walter M. Fortenberry  
Texas Banc Savings Building  
10203 Birchridge, Suite 202  
Humble, Texas 77338  
(w/o enclosures)