



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 11, 1994

Ms. Debra A. Drayovitch  
City Attorney  
City of Denton  
Municipal Building  
Denton, Texas 76201

OR94-064

Dear Ms. Drayovitch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> We assigned your request ID# 22669.

The City of Denton (the "city") has received a request for duplicates of the "mug shots" of four individuals. You object to release of the requested information and claim that section 552.108 of the act exempts it from required public disclosure.

In Open Records Decision No. 616 (1993) (copy enclosed), this office recently determined that a mug shot taken in connection with an arrest for which the arrestee was subsequently convicted that did not relate to an active criminal investigation was not protected from public disclosure under section 552.108 of the act. However, this office has determined on numerous occasions that where a law enforcement agency is actively investigating a matter, section 552.108 exempts from disclosure all information relating to the investigation except that generally found on the first page of the offense report. See generally Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing 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)). We conclude that the mug

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. 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.

shots at issue here "relate" to a pending criminal investigation and therefore may be withheld under section 552.108 of the act.<sup>2</sup>

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,



William Walker  
Assistant Attorney General  
Open Government Section

WMW/GCK/rho

Ref.: ID# 22669  
ID# 22672

Enclosure: Open Records Decision No. 616  
Submitted documents

cc: Mr. Russell Fish  
P.T. Acquisitions  
#1 Green Lanes  
Austin, Texas 78703  
(w/o enclosures)

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<sup>2</sup>Because the requestor has specified the particular offenses that gave rise to the creation of the requested mug shots, we do not believe that the request entails an unlawful compilation of the individuals' criminal history. See 28 C.F.R. § 20.20(c). Consequently, because section 552.108 is a discretionary exception, the city, if it so chooses, may release the requested mug shots without violating section 552.352 of the Government Code.