



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 15, 1993

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-123

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 23034.

The City of Houston Police Department (the "department") has received a request for photographs taken at the crime scene of an aggravated assault. The department claims that the requested information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 excepts:

- (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.

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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

which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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); Open Records Decision No. 127 (1976) at 3-4 (list of factual information available to the public) (copy enclosed).

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. 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 department claims that "the prospects for prosecution of this case are more than just speculative or nebulous." You indicate that the suspect in the case can be identified and that "[i]t is a matter of awaiting apprehension." Because the department has demonstrated that the potential for prosecution still exists, we believe that the department has met its burden to show how release of the requested information would unduly interfere with law enforcement and crime prevention. Accordingly, you may 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,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LBC/rho

Ref.: ID# 23034
ID# 23170

Enclosures: Open Records Decision No. 127
Returned documents

cc: Mr. Bruce Harrison
Chief Investigator
Abraham, Watkins, Nichols, Ballard & Friend
800 Commerce Street
Houston, Texas 77002-1776
(w/o enclosures)