



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Ms. Cynthia N. Milne  
General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR94-150

Dear Ms. Milne:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552 (formerly V.T.C.S. article 6252-17a).<sup>1</sup> We assigned your request ID# 21495.

The Texas Department of Criminal Justice (the "department") has received a request for certain personnel records of Kelli Brock. You advise us that the department has made most of the requested information available to the requestor. You have submitted one document to us for review, however, and claim that section 552.108 of the Government Code exempts it from required public disclosure.

Section 552.108 exempts:

- (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.

---

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We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally Open Records Decision No. 127 (1976). Otherwise, when a law enforcement agency claims the "law enforcement" exception, the agency reasonably must explain, if the information does not supply the explanation on its face, how release unduly would interfere with law enforcement. Open Records Decision No. 434 (1986) at 2-3 (quoting Open Records Decision No. 287 (1981)). This office determines on a case-by-case basis whether certain information falls within the section 552.108 exception. *Id.* at 2. The department is a law enforcement agency within section 552.108 of the act. Open Records Decision No. 413 (1984) at 1.

We have examined the information submitted to us for review and have considered your arguments. We conclude that you have demonstrated that release of the submitted document unduly would interfere with law enforcement. Accordingly, the department may withhold the submitted document from required public disclosure under section 552.108 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving the 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,

  
Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/GCK/rho

Enclosure: Submitted documents

Ref.: ID# 21495  
ID# 21525  
ID# 21561  
ID# 21575  
ID# 21614

cc: Mr. Peter Perez  
8126 Beechcover Lane  
Houston, Texas 77072  
(w/o enclosures)