Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR94-195

Dear Mr. Showen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).[1] Your request was assigned ID# 24216.

The City of Tyler received an open records request for the offense reports concerning the murder of Nicholas West and "hate crime incidents at Bellwood Lake." You have submitted four offense reports to our office for review, which we have marked as exhibits 1 through 4.[2] You claim that these offense reports are excepted from required public disclosure under section 552.108 (formerly article 6252-17a, section 3(a)(8), V.T.C.S.).

Section 552.108 excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ." For cases that are still under active investigation or prosecution, section 552.108 may be invoked to except from disclosure all information except that generally found on the first page of the offense report. Open Records Decision No. 611 (1992) at 2. Information generally found on the first page of an offense report may be withheld only if the governmental body demonstrates that releasing the information would unduly interfere with law enforcement or prosecution. Open Records Decision No. 508 (1988) at 2. In closed cases, however, the governmental body must

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[1]The Seventy-third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. *See* Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

[2]We note that none of these offense reports deals with the actual murder of Mr. West. We assume that this crime is being investigated by another jurisdiction, such as the Smith County Sheriff's Department, and that you do not have a copy of the offense report regarding the murder.

demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold any of the information under section 552.108. Open Records Decision No. 611 at 2.

Based on the information we have presently, we conclude that you must release exhibit 1 in its entirety. The information you have provided us demonstrates that the investigation of the particular incident recorded in exhibit 1 is no longer active. Moreover, you have not demonstrated how the information in this exhibit relates to any active investigation or how release of the information would unduly interfere with law enforcement. Therefore, you have not met your burden of demonstrating how and why section 552.108 applies to exhibit 1, and you may not withhold exhibit 1.[3]

We also conclude that you must release those portions of exhibits 2, 3, and 4 that constitute information generally found on the first page of an offense report. You may, however, withhold the remaining information in these exhibits. You represent that these exhibits relate to a pending criminal case, and we have no evidence to suggest that the investigations into the incidents recorded in these exhibits are not still active. On the other hand, you have not demonstrated that releasing the information generally found on the first page of an offense report would unduly interfere with law enforcement, Therefore, you may withhold all information except that generally found on the first page of the offense report, but you must disclose those portions of exhibits 2, 3, and 4 that constitute information generally found on the first page of an offense report.[4]

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,

Margaret A. Roll
Assistant Attorney General
Open Government Section

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[3]On the other hand, when a governmental body fails to meet its burden of demonstrating that an exception applies to particular information, it may withhold the information if it later demonstrates a compelling reason for withholding it. In appropriate circumstances, a law enforcement interest can be a compelling reason for nondisclosure. *See* Open Records Decision No. 586 (1991) at 3. Thus, if you believe that you have a compelling law enforcement reason for withholding any portion of exhibit 1, you should submit another request to our office that explains your reason.

[4]We have enclosed a sheet with information that should help you determine which information must be made available to the public because it is information generally found on the first page of the offense report.

MAR/rho

Ref.: ID# 24216
ID# 24262

Enclosures: Excerpt from Open Records Decision No. 127 (1976)
Submitted documents

cc: Mr. Hugh B. Callaway
2611 Throckmorton, #122
Dallas, Texas 75219
(w/o enclosures)