



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Mr. Hugh W. Davis
Assistant City Attorney
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR94-508

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 24936.

The City of Fort Worth (the "city") has received a request for information relating to the requestor's conviction for murder. Specifically, the requestor seeks the "line-up" sheets and complaining witness affidavits. You advise us that the city turned the requested affidavits over to the district attorney and is therefore no longer in constructive possession of them. The Open Records Act does not require a governmental body to obtain information not in its constructive possession. See Open Records Decision No. 558 (1990). You claim that section 552.108 of the Government Code exempts the requested "line-up" sheets from required public disclosure.

Section 552.108 of the Government Code provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(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 is excepted from [required public disclosure].

Gov't Code § 552.108. Section 552.108 excepts from required public disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open

Records Decision No. 531 (1989) at 2 (quoting *Ex Parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When this exception is asserted, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. A governmental body may withhold the names and statements of witnesses if the governmental body determines:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4; *see also* Open Records Decision No. 297 (1981) at 2. This office will consider, among other things, whether a witness was given an express promise of confidentiality in determining whether section 552.108 protects the witness' identity. Open Records Decision No. 252 at 2. As always, whether information falls within the section 552.108 exception must be determined on a case-by-case basis. Open Records Decision Nos. 434 at 2; 287 (1981) at 1-2.

You have submitted the requested "line-up" sheets to us for review. They relate to a closed murder investigation. You advise us that the submitted information contains "witness information" and therefore falls within the section 552.108 exception. Indeed, some of the records submitted to us for review appear to identify a witness. However, you have not provided facts sufficient to make a determination that release of this information will "either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers." For example, you have given us no indication that the witness was given an express promise of confidentiality. We conclude, therefore, that the city has not demonstrated that release of the requested information would unduly interfere with law enforcement. Accordingly, the city may not withhold the submitted information under section 552.108 of the Government Code. The city must release the submitted information in its entirety.

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/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 24936

cc: Mr. Gino Anthony Porter
Route 2, Box 4401
Gatesville, Texas 76597
(w/o enclosures)