



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Mr. Gary W. Smith
City Attorney
City of Greenville
P.O. Box 1049
Greenville, Texas 75403-1049

OR94-680

Dear Mr. Smith:

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# 28058.

The City of Greenville (the "city") has received a request for a certain police report involving a criminal mischief complaint. Specifically, the requestor seeks the report for incident number 94-48773. You have submitted the requested information to us for review and claim that sections 552.101, 552.103, and 552.108 of the Government Code except it from required public disclosure.

Section 552.108 excepts from required public disclosure

(a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

(b) [a]n 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

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. 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 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). Otherwise, when the "law enforcement" exception is claimed, 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 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2.

You advise us that the requested information relates to pending prosecution for criminal mischief. Accordingly, we conclude that, except for first-page offense report information, the city may withhold the requested information under section 552.108 of the Government Code.¹

You also argue that the suspect's identity is excepted from disclosure by section 552.101. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section protects information if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.² The identity of a criminal suspect is of legitimate concern to the public. Open Records Decision No. 408 (1984) at 10. Therefore, you may not withhold the suspect's identity under section 552.101. As we resolve this matter under sections 552.108 and 552.101, we need not address the applicability of section 552.103 at this time.

¹We note the offense report you submitted for review indicates that the suspect was arrested shortly after the incident. The identity and other information regarding a suspect who has been arrested is public information under the court's holding in *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. We also remind you that section 552.108 is a discretionary exception to required public disclosure. *See* Gov't Code § 552.007. Therefore, you may choose to release to the public some or all of the information requested in this case.

²False light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body may not withhold information under section 552.101 of the Government Code merely because it would place a person in a false light. *See* Open Records Decision No. 579 (1990).

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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Enclosures: Submitted documents

Ref.: ID# 28058

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(w/o enclosures)