



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 27, 1994

Ms. Beth Smith and Ms. Joan Judy  
Assistant Attorneys General  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR94-702

Dear Ms. Smith and Ms. Judy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29033.

The Office of the Attorney General (the "OAG") received an open records request for, *inter alia*, "[d]ocuments and files pertaining to the investigation of the 1984 execution-style slayings of employees at a Kentucky Fried Chicken [restaurant] in Kilgore." You state that you have released to the requestor "numerous public documents" in response to the request. You contend, however, that other responsive documents, representative samples of which you have submitted to this office for review,<sup>1</sup> are exempted from public disclosure by sections 552.101 and 552.108 of the Government Code.<sup>2</sup>

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

<sup>2</sup>Because we resolve your request under sections 552.101 and 552.108, we need not discuss the other exceptions that you raise.

You have submitted to this office for review the following documents: A case investigation report and related internal memoranda and case notes prepared by an assistant attorney general; a computer print-out entitled "Corrections Tracking System-Offender Data"; and memoranda prepared by Federal Bureau of Investigation ("FBI") agents during their investigation of the murders. The availability of FBI memoranda is governed by Open Records Decision No. 561 (1990). Where a federal agency shares information with a governmental body in Texas pursuant to a federal policy affording the governmental body greater access to the information than the general public, section 552.101 of the Government Code will except such information from public disclosure if the information is confidential in the hands of the federal agency under federal law. Open Records Decision No. 561 at 7. Each of the memoranda in question contains a notation that provides as follows:

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Clearly, these records are deemed confidential by the FBI. *See* 5 U.S.C. § 552(b)(7) (law enforcement exception under federal Freedom of Information Act). In accordance with Open Records Decision No. 561, the OAG must withhold the FBI memoranda in their entirety pursuant to section 552.101.

We next discuss the applicability of section 552.108 of the Government Code to the remaining records. Section 552.108, known as the "law enforcement" exception, 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 . . . .

(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 . . . .

You explain that "peace officers," as defined by article 2.12(25) of the Code of Criminal Procedure, employed with the Prosecutor's Assistance Division of the OAG are conducting the criminal investigation pursuant to article 20.03 of the code, which provides:

"The attorney representing the State" means the Attorney General . . . . The attorney representing the State, is entitled to go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same.

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), the court of civil appeals established the guidelines regarding the types of information contained in police files that normally constitute public information. In Open Records Decision No. 127 (1976) at 4, this office concluded that during the pendency of a criminal investigation, law enforcement agencies may withhold all information gathered during the course of the investigation under section 552.108 except for information which is typically found on the front page of the offense report. Based on your representation that you have released to the requestor "numerous public documents," we assume that the first page of the offense report was among those released records. Because you have represented that the OAG's investigation of the murders is on-going, the OAG may withhold the remaining records at this time pursuant to section 552.108.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/RWP/rho

Ref.: ID# 29033

Enclosures: Submitted documents

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