



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 20, 1995

Mr. Michael J. Cosentino
Deputy City Attorney
Department of Law
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR95-136

Dear Mr. Cosentino:

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# 31052.

The City of Austin (the "city") has received a request for information relating to "the issues raised in the pre-termination notice of Wayne Breed," a city employee. Specifically, the requestor seeks:

1. Printout of all expenses that involve the contract with JRM Transmissions;
2. Vehicle work orders and printouts involving any and all repairs performed between September 1, 1993 to and October 1, 1994 for [certain city vehicles];
3. Copies of the audio tapes used to record the interview between the Auditors Office investigators and Mr. Wayne Breed, Reginald Hodges and Tommy Hernandez . . . [including] the transcripts of these interviews. . . .
4. [As well as] budget transfer documents associated with the move of the transmission shop . . . [including] the transfer of funds for parts purchase[d].

You advise us that the city has made some of the requested information available to the requestor, to the extent that it exists. You object, however, to releasing the remainder of the requested information--a certain audiotaped interview that you have submitted to us for review--and claim that section 552.108 of the Government Code exempts it from required public disclosure.

Section 552.108 exempts 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 exempts 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 its 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.

We understand that the submitted audiotapes relate to an ongoing criminal investigation being conducted by the city police department. The audiotapes do not appear to contain first-page offense report information. Accordingly, we conclude that the city may withhold the submitted information in its entirety under section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref: ID# 31052

Enclosures: Submitted audiotapes

cc: Mr. Greg Powell
AFSCME
1106 Lavaca Street, Suite 100
Austin, Texas 78701
(w/o enclosures)