



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1995

Ms. Doreen E. McGookey
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Bldg.
Dallas, Texas 75201

OR95-152

Dear Ms. McGookey:

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# 31609.

The Dallas Fire Department (the "department") received a request for copies of all reports and other documents regarding an incident investigated by the department. You claim the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that article 39.14 of the Code of Criminal Procedure makes the requested information confidential under section 552.101. Article 39.14 protects from discovery in a criminal case the work product of counsels, their investigators, and their notes or reports.

Discovery privileges are not covered under section 552.101; such information is "privileged" only to the extent that a court in a particular case deems it to be so. Open Records Decision No. 575 (1990). Accordingly, you may not withhold the requested information under section 552.101 of the Government Code.¹

¹Some discovery privileges are covered under other sections of the Government Code. Section 552.107 covers information within the attorney-client privilege and section 552.103 covers information

Section 552.101 also incorporates the common-law right of privacy. However, the documents submitted to this office indicate that the person involved in the fire is deceased. The right of privacy lapses upon the death of an individual. Attorney General Opinion H-917 (1976); Open Records Decision Nos. 272 (1981); 216 (1978). Furthermore, Texas law does not permit the family of a deceased person to maintain an action for the deceased's right of privacy because that right is personal, and as stated above, a deceased person has no right of privacy. Open Records Decision No. 432 (1985). Therefore, you may not withhold the requested information under the common-law right of privacy.

You also raise section 552.108. Section 552.108 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].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *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 (listing factual information available to public).

You state that the investigation is still active, pending the medical examiner's report. Accordingly, except for the type of information usually found on the front page of an offense report, you may withhold the requested information under section 552.108 of the Government Code.

(Footnote continued)

within an attorney's work product. See Open Records Decision Nos. 575, 574 (1990). You did not raise these exceptions in your request to this office for an open records decision. The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990); 532 (1989); 515 (1988). The Office of the Attorney General will raise section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481, 480, 470 (1987).

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 31609

Enclosures: Submitted documents

cc: Ms. Lynn A. Grisham
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(w/o enclosures)