



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 8, 1995

Mr. David M. Douglas  
Assistant Chief  
Legal Services  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR95-376

Dear Mr. Douglas:

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# 32167.

The Department of Public Safety (the "department") received a request for an audio copy of the department's radio communication related to a shooting incident involving one of the department's troopers which occurred on February 23, 1995. The shooting resulted in the death of a person. You state that this incident is currently under investigation. You contend "[t]hat the requested audio tape is an internal record and notation of a law enforcement agency which is maintained for internal use in matters relating to law enforcement" and is excepted from public disclosure by section 552.108 of the Government Code. You have submitted an audio recording of the department's radio dictaphone logger for February 23, 1995, for a two hour time period beginning with the shooting for our review.

We also note your submission of a letter you received from the Tarrant County District Attorney's Office by which they assert an objection to the disclosure of the audio tape because it relates to potential criminal litigation. On behalf of the district attorney, you contend that the audio tape is excepted from disclosure by section 552.103 of the Government Code.

Section 552.108 provides that:

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

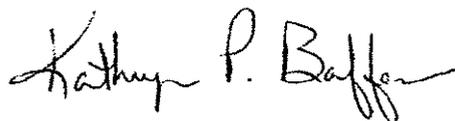
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

In an open criminal case, section 552.108 exempts from disclosure all information except that normally 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). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

As you inform us that the investigation is pending and the tape contains information that would be excepted from disclosure were it to appear in an offense report, you may withhold the tape pursuant to section 552.108. Because we have determined that you may withhold the tape under section 552.108, we decline to address the applicability of section 552.103 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 any questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Government Section

KPB/KHG/rho

Ref.: ID# 32167

Enclosures: Submitted audio tape

cc: Mr. Rand LaVonn  
570 KLIF Talk Radio  
3500 Maple at Turtle Creek  
Dallas, Texas 75219  
(w/o enclosures)