



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 13, 1995

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

OR95-390

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# 32605.

The City of Dallas (the "city") received a request for:

A copy of the arrest warrant affidavit filed by Dallas homicide detectives in the arrest of Abdel Mohamad Rahim in connection with the death of Ahmad Hassan Hussein.

You claim that this information is excepted from disclosure under sections 552.101, 552.108, and 552.103 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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 counsel, their investigators, and their notes or reports. Code Crim. Proc. art. 39.14.

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.

Section 552.108 excepts from 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 or prosecution.

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. 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). 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).

First page offense report information may not be withheld under section 552.108. In *Houston Chronicle Publishing Co.*, the court identified certain types of information that are public. *Houston Chronicle Publishing Co.*, 531 S.W.2d at 186-87. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than its location. See Open Records Decision No. 127 (1976) at 5.

We have reviewed the arrest warrant affidavit. You advise us that this is part of an on-going investigation. Therefore, pursuant to section 552.108, you may withhold the requested information with the exception of the information on the affidavit that is normally included on the first page of an offense report.<sup>1</sup>

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<sup>1</sup>The city may not withhold this information from disclosure once the investigation is over unless the city can demonstrate that release would unduly interfere with law enforcement or prosecution. Open Records Decision No. 518 (1989). Additionally, if this affidavit has been filed in public court records, it has lost any protection and must be disclosed. Finally, we note that article 15.17 of the Code of Criminal Procedure provides: “[T]he person making the arrest shall without unnecessary delay take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made. . . . The magistrate shall inform in clear language the person arrested . . . of the accusation against him *and of any affidavit filed therewith.*” Code Crim. Proc. art. 15.17(a) (emphasis added).

You also contend that the report is excepted from disclosure pursuant to section 552.103(a). Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

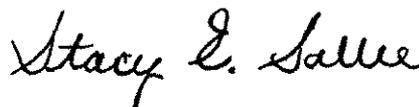
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Gov't Code § 552.103(a). As we have indicated, the city may withhold all but first page offense report information from the requestor under section 552.108. In the past, this office has held that section 552.103(a) does not except from disclosure information that has been made available to the other party in the litigation. Open Records Decision No. 597 (1991). Therefore, first page offense report information must be made available once a suspect has been charged. *Id.* at 3.

The document at issue, the affidavit for an arrest warrant, was prepared before the suspect was charged. If the suspect has not yet been charged with the offense set out in the affidavit, you may withhold that information until the suspect learns the information during the course of the prosecution, presumably from the magistrate. If, on the other hand, the suspect has been arrested and charged with the offense set out in the affidavit, and has thereby been informed of information that would appear on the first page of an offense report, you may not withhold that information.<sup>2</sup>

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

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<sup>2</sup>The applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

SES/KHG/rho

Ref.: ID# 32605

Enclosures: Submitted documents

cc: Ms. Nora López  
Reporter  
The Dallas Morning News  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202-2711  
(w/o enclosures)