



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

Mr. Cary L. Bovey
Sheets & Crossfield, P.C.
309 E. Main Street
Round Rock, Texas 78664-5246

OR95-485

Dear Mr. Bovey:

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# 32019.

The City of Round Rock (the "city") received an open records request for "a copy of all incident reports, offense reports, and memorandum of any and all accidents, criminal activities, or investigations conducted on Louis Henna Boulevard, . . . from the period of August 1, 1994, to the present." You state that you have released to the requestor some of the requested information. You contend that the information you have not released relates to "active/pending criminal investigations and prosecutions" and is, therefore, excepted from required disclosure by section 552.108 of the Government Code. Additionally, you contend that some of the information sought to be withheld is excepted from required disclosure by the informer's privilege which is incorporated into section 552.101 of the Government Code. You have submitted for our review documents that you have not released as well as documents you have released to the requestor.

You state that there are three pending criminal cases related to this open records request. These cases include an arrest for possession of marihuana, an arrest for driving while intoxicated and an investigation into the murder of two females whose bodies were discovered on property adjacent to Louis Henna Boulevard. You state that you have released the first pages of the offense reports related to the arrest for possession of marihuana and the arrest for driving while intoxicated. Regarding these two cases, you state that you have not released the police officers' investigative reports because you believe that they are excepted from required disclosure by section 552.108 since these are

active or pending cases. Regarding the murders, you state that you have released the first page of the related offense reports to the requestor, however, you have withheld the investigatory records. You contend that since the investigation is ongoing, the investigatory records are excepted from required disclosure by section 552.108. You state that due to the voluminous nature of the investigatory records related to the two murders, you have submitted for our review a representative sampling of the records which you contend are excepted from required disclosure. You have also submitted for our review a copy of the information related to the two murders which you state you have released to the requestor.

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].

When an incident involving allegedly criminal conduct is under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information, which is generally found on the front page of police offense reports, 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). We note that it is the content of the information regardless of its location in the documents that determines whether information must be released under *Houston Chronicle Publishing Co.* See Open Records Decision No. 127 (1976) at 5. After an investigatory file is closed, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982).

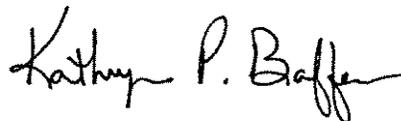
Regarding the undisclosed information related to these three incidents, we conclude that such information as that listed in *Houston Chronicle Publishing Co.* and Open Records Decision 127 (1976), some of which is not listed on the first page of the offense reports but appears elsewhere in the reports, is subject to disclosure. See Open Records Decision No. 394 (1983). The city may withhold the remaining information in these reports based upon section 552.108.

In reaching our conclusion, we assume that the representative samples from the investigatory records related to the murders of the two females submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 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 that submitted to this office.

Because we have determined that the information in this case that would be protected from disclosure by the informer's privilege as incorporated by section 552.101 is protected by section 552.108, we need not address your section 552.101 argument.

We are resolving this matter with this 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 may 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,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref.: ID# 32019

Enclosures: Submitted documents

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