



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 28, 1995

Mr. Robert P. Rose  
Assistant City Attorney  
City of Austin  
Department of Law  
P.O. Box 1088  
Austin, Texas 78767-1088

OR95-538

Dear Mr. Rose:

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# 31682.

The requestor seeks copies of any police reports which contain information referring to a particular individual. You have located four reports referring to this individual. You claim that two of the police reports (94-3021861 and 95-0140418) are excepted from required public disclosure pursuant to section 552.108, and that the other two police reports (94-2581530 and 94-3370080) are excepted from required public disclosure under section 552.101.

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); 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).

With respect to the first two police reports (94-3021861 and 95-0140418), you inform us that both relate to active criminal cases that are currently pending. Therefore, you may withhold the requested information under section 552.108, with the exception of first page offense report material which you indicate has been or will be released.

You assert that the remaining police reports (94-2581530 and 94-3370080) are excepted from disclosure pursuant to the doctrine of common-law privacy as incorporated into the act by section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have reviewed the two remaining police reports (94-2581530 and 94-3370080). They contain highly intimate information relating to an individual's emotional state. *See* Open Records Decision No. 262 (1980). We agree with your assessment that the information in the reports implicates privacy rights, and is of no legitimate public interest. *Id.* Accordingly, the two remaining reports may be withheld in their entirety pursuant to section 552.101.

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,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/LMM/rho

Ref.: ID# 31682

Enclosures: Submitted documents

cc: Mr. Ken Bates  
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(w/o enclosures)