



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. R. John Cullar
City Attorney
Mills, Millar, Matkin & Cullar
P.O. Box 7872
Waco, Texas 76714-7872

OR95-788

Dear Mr. Cullar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 31081.

The City of Lorena, Texas (the "city"), which you represent, has received a request for documents from a former public utilities director concerning a Lorena Police Department investigation into the director's activities. You state that criminal charges have been filed against the requestor and that the investigation is ongoing. You claim that the enclosed documents from the Lorena Police Department's files are exempt from required disclosure under sections 552.101, 552.103(a)(1), and 552.108 of the Government Code.

In a criminal case that is under active investigation, section 552.108 excepts from disclosure all information except that 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). As a general rule, the information that can be withheld is evidentiary information and the information that must be released includes basic information about the arrested person, the arrest, and the crime.

¹The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. *See* Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code ch. 552) (copy available from House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

Although the basic information is generally available to the public, it may be withheld in active cases if it satisfies the same test used to determine whether information in closed cases may be excepted under 552.108. *See* Open Records Decision No. 366 (1983) at 3 (first page of offense report is not protected by Government Code section 552.108, except in circumstances where release of particular information would “unduly interfere with law enforcement or crime prevention”). 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 No. 434 (1986).

You explain that the Lorena Police Department has filed formal criminal charges against the requestor with the McLennan County District Attorney and that the investigation is ongoing. Thus, you have shown that the information at issue relates to an active case. Accordingly, you may withhold all of the requested information with the exception of the first page of the offense report. As we resolve this matter under section 552.108, we need not address the applicability of sections 552.101 and 552.103(a)(1) at this time.

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/LS/rho

Ref.: ID# 31081

Enclosures: Submitted documents

cc: Mr. Edward E. Hale
301 South Oak Street
Lorena, Texas 76655
(w/o enclosures)