



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1995

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR95-1036

Dear Mr. Showen:

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# 36054.

The Tyler Police Department (the "department") received an open records request for "a complete copy of all reports" pertaining to an on-going investigation of a domestic disturbance. You contend the requested information is excepted from public disclosure under the "law-enforcement exception," section 552.108 of the Government Code.¹

¹You also contend that the requested information is confidential in accordance with the Texas Supreme Court's holding in *Hobson v. Moore*, 734 S.W.2d 340, 341 (Tex. 1987). However, the *Hobson* case has no bearing on whether information is subject to public disclosure under the Open Records Act. In *Hobson*, the court cited the predecessor statute to section 552.108 by analogy and recognized a law enforcement investigation privilege from civil discovery. This office, in Attorney General Opinion JM-1048 (1989), cited *Hobson* and its progeny but noted that neither *Hobson* nor any other reported Texas case directly addressed whether the act's exceptions created new privileges from discovery. Subsequent to the court's holding in *Hobson*, the Seventy-first Texas Legislature added subsection (f) to section 14 of former article 6252-17a (now found at Gov't Code § 552.005):

(f) This Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure. The exceptions from disclosure under this Act do not create new privileges from discovery.

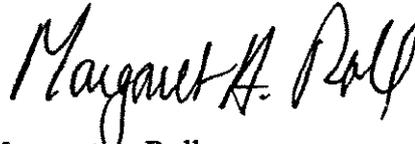
Acts 1989, 71st Leg., ch. 1248, § 18, at 5029. This amendment reflects a legislative overruling of the court's dicta that the act's exceptions create privileges from discovery.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Traditionally, when applying section 552.108, our office has distinguished between cases that are under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are under active investigation, section 552.108 excepts from required public disclosure all information contained in police offense reports except for the "front page offense report information." See generally Open Records Decision No. 127 (1976).

Accordingly, the department must release the "public" information contained in the offense report in accordance with Open Records Decision No. 127 (1976). See attached list of public and non-public information. The department may withhold the remaining portions of the offense report pursuant to section 552.108 during the pendency of the criminal investigation.

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 Records Division

MAR/RWP/rho

Ref.: ID# 36054

Enclosures: Submitted documents
Attachment of Summary of ORD-127

cc: Mr. Jim Mantooth
P.O. Box 130151
Tyler, Texas 75710
(w/attachment)