



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1995

Mr. Gilbert D. Douglas
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1154

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27080.

The City of Houston (the "city"), through its police department, has received a request for information relating to a certain homicide investigation. Specifically, the requestor seeks "all information contained in H.P.D. Offense Report #46329393, styled 'Retaliation.'" You advise us that the city will make available first-page offense report information in accordance with Open Records Decision No. 127 (1976) (summarizing information available to the public under *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)). You object to releasing the remaining information, however, and claim that section 552.108 of the Government Code excepts it from required public disclosure.

Section 552.108 of the Government Code excepts from required public disclosure "[a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n 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."¹ When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation

¹The Seventy-fourth Legislature amended section 552.108 of the Government Code effective for requests for information received by a governmental body on or after September 1, 1995. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 8, 26, 1995 Tex. Sess. Law Serv. 5127, 5131, 5142 (to be codified at Gov't Code Ch. 552). We do not address in this ruling what affect, if any, this amendment will have on requests for information that are made on or after September 1, 1995.

and other information. 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). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 2 (citing *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)).

You advise us that the city police department has discontinued its investigation in this matter, but that murder charges have been filed in state court in Los Angeles against the subjects of the Houston investigation. We understand that the charges were brought to trial in Los Angeles in early June 1994. We assume that prosecution of the murder charges has been concluded and that the case is closed. If this is the case, then the city no longer has any basis for withholding the requested information under section 552.108 and must release it in its entirety. Of course, if the prosecution is still pending, section 552.108 of the Government Code excepts the requested information from required public disclosure.

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

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Ref.: ID# 27080

Enclosures: Submitted documents

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(w/o enclosures)