



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1995

Ms. Barbara E. Roberts
City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR95-1203

Dear Ms. Roberts:

The City of Galveston (the "city") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 36407.

The city received a request from the German Consulate General in Houston for information concerning the shooting death of a German national. The request was for the "police protocol of the incident," the police report, the autopsy and medical examiner's report, and information concerning the status of the investigation. You have submitted to this office as responsive to the request a copy of the police investigation records.

We note initially that you did not submit an autopsy report to this office. Since autopsy reports are expressly made public under section 11, article 49.25 of the Code of Criminal Procedure, an autopsy report may not be withheld from disclosure. *See* Open Records Decision No. 529 (1989).

You assert that the police investigation records submitted to this office are excepted from disclosure pursuant to section 552.108. When applying section 552.108, this office distinguishes between cases that are still under investigation and those that are closed. 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 an offense report. Open Records Decision No. 127 (1976). Section 552.108 is applicable while the case is being investigated until it is

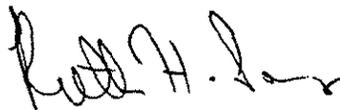
closed through prosecution or through administrative decision.¹ Attorney General Opinion MW-446 (1982) at 2. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision Nos. 518 (1989), 216 (1978) at 4.

However, even if an investigation is ongoing, first page offense report information must be released regardless of where it is located. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court identified certain types of information which are public. Although this information is generally found on the first page of an offense report, its location is not determinative. To determine what information must be released, the type of information must be examined rather than where it is located. See Open Records Decision No. 127 (1976) at 5.

As you indicate that this is an ongoing investigation, all but the first page offense report information may be withheld from disclosure. Of course, since section 552.108 is discretionary with the governmental body claiming the exception, the city also may choose to voluntarily release the information. Gov't Code § 552.352; Open Records Decision No. 216 (1978) at 2.

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 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 36407

Enclosures: Submitted documents

¹We note that if a final determination is made that the death in question was a suicide, this would appear to close the case.

cc: Ms. Andrea Mohwald
German Consulate General
1330 Post Oak Blvd.
Houston, Texas 77056
(w/o enclosures)