



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1278

Dear Ms. Calabrese:

You have asked if 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# 36511.

The City of Houston (the "city") received a request for information concerning the shooting death of an individual. You have apparently already released to the requestor some of the requested records. You also have informed the requestor that the city does not have records responsive to part of the request. *See* Open Records Decision No. 362 (1983) (city does not have to supply information that does not exist). However, the city has submitted to this office records of the police investigation file that are responsive to the request. You contend that these documents 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).

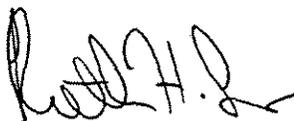
Although the death in question has been determined to be a suicide, it appears that there is an ongoing internal affairs investigation into the actions of several police officers. Apparently for this reason, you contend the investigation is active. We disagree. The investigation into the death apparently has ended with the conclusion that it was a suicide.

Since the investigation into the death has concluded, section 552.108 is inapplicable unless it is clear from the information itself or you demonstrate how a release of the information at issue will unduly interfere with law enforcement or prosecution. Open Records Decision Nos. 518 (1989) at 6 (if not apparent on face of information, governmental body must show how release will interfere with law enforcement); 434 (1986) at 2 (relevant question is whether release will undermine law enforcement or prosecution). You have submitted an affidavit from an internal affairs police lieutenant stating that, because of allegations raised by the family of the deceased individual, internal affairs is conducting an investigation. The affidavit also states that any time allegations of police misconduct are raised, the police department routinely conducts an internal investigation. However, section 552.108 is not applicable in this situation.

We note, though, that the records at issue provide the home address and home telephone number of a police officer. This information must be withheld from disclosure pursuant to section 552.117.

You must release the other information at issue to the requestor. 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 36511

Enclosure: Submitted document

cc: Ms. Karan Rippley-Abbott
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(w/o enclosure)