



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Mr. Jack Harwell  
Sheriff, McLennan County  
219 North Sixth Street  
Waco, Texas 76701

OR95-1561

Dear Mr. Harwell:

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# 37574.

You state that a request for a 9-1-1 tape was originally submitted to the Waco Police Department. As you possess a copy of the request, we assume that the City of Waco forwarded the request to you. You also state that under a cooperative working agreement between the City of Waco and McLennan County, the City of Waco acts as "custodian or agent" with regard to tapes of 9-1-1 calls related to incidents which occur in the unincorporated areas of McLennan County. Because the City of Waco is merely a custodian of McLennan County's 9-1-1 tapes, it is appropriate for McLennan County to seek an attorney general decision regarding release of the enclosed 9-1-1 tape. *See* Open Records Decision No. 576 (1990).

You seek exception from public disclosure under Section 552.108 of the Government Code<sup>1</sup>. Section 552.108(a) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime." When applying section 552.108, this office distinguishes between cases that are still under active 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

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<sup>1</sup>Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131.

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). 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 Nos. 444 (1986), 434 (1986). You state that the 9-1-1 tape is related to criminal conduct which is under active investigation; you also offer a clear explanation of how the tape is related to that investigation. Consequently, the 9-1-1 tape is excepted from required public disclosure under section 552.108.

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 is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/rho

Ref.: ID# 37574

Enclosure: Submitted tape

cc: Mr. Brad Reagan  
Reporter  
Waco Tribune-Herald  
P.O. Box 2588  
Waco, Texas 76702-2588  
(w/o enclosure)