



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Tarrant County
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR96-0101

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36870.

The Tarrant County Criminal District Attorney's Office (the "district attorney") received a request for a copy of "Case No. 517382 in its entirety." You contend that the requested information is excepted from required public disclosure under sections 552.108 and 552.222 of the Government Code.

On November 8, 1995, this office notified you via facsimile that you failed to comply with the following requirements of Government Code section 552.301(b):

1. submit to the attorney general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
2. submit to the attorney general a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and
3. label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

You replied by letter dated November 14, 1995, stating that you had set out your written comments in your initial letter of October 30, 1995, and submitted the documents as "Exhibit B." Although we received a cover sheet marked "Exhibit B" with your initial letter, our records indicated that the documents that correspond with "Exhibit B" were not included with your initial letter. You did, however, provide these documents with your November 14, 1995, letter, thus satisfying your burden under section 552.301(b)(2).¹

One of the sections you raise in support of withholding the requested information is section 552.222. The amendment to section 552.222 by the Seventy-fourth Legislature codified the long-standing policy of this office that a governmental body may properly require a requestor to identify the particular kind of document being sought.² The amendments do not provide, however, that information is excepted from the requirements of section 552.021 under section 552.222.³ Section 552.222 is part of Government Code subchapter E concerning the procedures related to access, not subchapter C setting out the information that is excepted from required public disclosure. Information is excepted from required public disclosure only if a governmental body can demonstrate that one of the exceptions in subchapter C is applicable.⁴ Open Records Decision Nos. 565 (1990),

¹In the past, we would have simply called your office and had the documents forwarded to us. However, due to the legislative amendments to the open records laws, this office has less discretion concerning the manner in which we respond to such a situation.

²*Compare* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 15, 1995 Tex. Sess. Law Serv. 5127, 5134 (codified as Gov't Code § 552.222(b)) (governmental body may ask requestor to clarify request for information if request is unclear and where large amount of information has been requested, governmental body may discuss with requestor narrowing scope of request) *with* Attorney General Opinion JM-672 (1987) (governmental body may require requestor to identify particular kind of document requested) *and* Open Records Decision Nos. 563 (1990) (governmental body may advise requestor of types of information available to facilitate narrowing broad request for information), 561 (1990) (governmental body may require requestor to identify information requested and may discuss types of information available to facilitate narrowing broad request for information), 304 (1982) (governmental body may require requestor to identify information requested). *C.f.* Open Records Decision Nos. 561 (1990) (governmental body must make good faith effort to relate request to information which it holds), 87 (1975) at 3 (governmental body has obligation to make good faith effort to advise requestor of types of documents available so that requestor may narrow request).

³*See* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 15, 1995 Tex. Sess. Law Serv. 5127, 5134.

⁴This interpretation of the act is supported by the plain language of the act as it read prior to its nonsubstantive recodification in 1993 as chapter 552 of the Government Code, *see* Act of May 4, 1993, 73d Leg., R.S., ch. 268, §§ 1, 46-47, 1993 Tex. Gen. Laws 583, 986, *amended by* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127. Until the legislature recodified the act in 1993, the portion of section 552.301(a) that requires a governmental body to request an attorney general decision was found in section 7(a) of article 6252-17a. Act of May 29, 1989, 71st Leg., R.S., ch. 1248, § 14, 1989 Tex. Gen. Laws 4996, 5027. That section provided in pertinent part:

If a governmental body receives a written request for information which it considers within *one of the exceptions stated in Section 3* of this Act, but there has been no previous determination that it falls within one of the exceptions, the

535 (1989), 526 (1989), 522 (1989), 517 (1989), 514 (1988), 509 (1988), 508 (1988), 506 (1988), 505 (1988), 502 (1988).

The request for information at issue, however, is not overly broad or vague. The requestor seeks a copy of "Case No. 517382 in its entirety." It is doubtful that the requestor could have been more specific than requesting information about a single case and providing the case number. The requestor need not identify particular documents contained in the case as you assert in your letter of October 30, 1995, to the requestor. It is clear that he is requesting all the documents concerning this case. Furthermore, as you do not indicate that the documents you submitted are representative samples from Case No. 517382, we assume you have submitted the case file to us in its entirety. Case No. 517382, as you have submitted it to our office, is comprised of less than 20 pages of information, is not voluminous, and can readily be identified as relating to the request. See Open Records Decision Nos. 561 (1990) (governmental body must make good faith effort to relate request to information which it holds). Finally, in seeking clarification of the request, you did not advise the requestor of the types of documents available to assist the requestor in narrowing or clarifying his request.⁵ See Open Records Decision Nos.

(Footnote continued)

governmental body within a reasonable time, no later than ten calendar days, after receiving a written request must request a decision from the attorney general to determine whether the information is within *that exception*.

Id. (emphasis added). The statutory predecessor to section 552.122, section 5(b) of article 6252-17a, V.T.C.S., was part of the original enactment of the Open Records Act. Act of May 19, 1973, 63d Leg., R.S., ch. 424, 1973 Tex. Gen. Laws 1112, 1115. Because the statutory predecessor was not placed in section 3, it was not one of the exceptions to required public disclosure.

Similarly, section 552.301(a), as amended by the Seventy-fourth Legislature, provides in pertinent part:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within *one of the exceptions under Subchapter C* must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within *one of the exceptions*.

Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139 (emphasis added). Section 552.222 is located in subchapter E, not subchapter C. Therefore, consistently with the statutory predecessor that section 552.301(a) nonsubstantively recodified, the plain language of section 552.301(a) does not encompass section 552.222 as an exception to required public disclosure.

⁵You also ask the requestor, in your letter of October 30, 1995, to clarify whether he is seeking to inspect the paper records or requesting that copies be made of the requested documents. The request letter reads "Under The Open Records Act I am requesting *a copy of*: case no. 517382 in its entirety."

563 (1990) at 7 (if request is overbroad, governmental body may advise requester of types of information available so that requester may narrow request); 87 (1975) at 3 (governmental body must make good faith effort to advise requestor of types of documents available so that requestor may properly narrow request).

You contend that section 552.108 excepts the requested information from required public disclosure. Section 552.108 provides that:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An 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 is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information which relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). You submitted an affidavit from Lt. Ray Enos which states that “[t]he investigation of [Case No. 517382] is currently in progress, is considered an active file by the Tarrant County Sheriff’s Department, and has not been formally filed with the Tarrant County District Attorney’s Office.” However, in *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), certain factual information generally found on the front page of police offense reports is public information even during an active investigation and must be released. We stress that it is the type of information that is dispositive of whether the information must be released in accordance with the *Houston Chronicle Publishing Co.* case, not the location of the information on the literal “first page” of an offense report.⁶ Accordingly, except for the information deemed public by the *Houston Chronicle Publishing Co.* case, you may withhold the requested information 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 should not be relied upon as a previous

(Footnote continued)

(Emphasis added.) The requestor was clear in his request that he sought copies of the requested documents.

⁶See Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "RWS", written in a cursive style.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/LBC/rho

Ref: ID# 36870

Enclosures: Submitted documents

cc: Mr. Lou Roberts
1009 Henderson Street
Fort Worth, Texas 76102
(w/o enclosures)