



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 23, 1996

Ms. Holly J. Stark  
Assistant County Attorney  
Cooke County Attorney's Office  
3rd Floor, Courthouse  
Gainesville, Texas 76240

OR96-0228

Dear Ms. Stark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38310.

Cooke County (the "county") received a request for documents relating to "3 cases . . . Tom Ellenger - Letters to Joe Thomas from D. August Boto and the case [the requestor] filed with Tanya Davis against Bryan Samples and 2 workers from Tom Thumbs Food & Drugs and the Belva McClinton Depart." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. 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 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).

It appears that all of the cases the requestor seeks are closed, as the prosecutor has decided not to prosecute them.<sup>1</sup> As you have not explained how release of the submitted information will unduly interfere with law enforcement and crime prevention, the county may not withhold the requested information under section 552.108(a).

You also contend that section 552.108(b) of the Government Code excepts the submitted information from required public disclosure. Section 552.108(b) excepts from disclosure “[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.” This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. As stated previously, the information does not supply an explanation on its face and you have not explained how release of the requested information will unduly interfere with law enforcement and crime prevention. Therefore, the county may not withhold the requested information under section 552.108(b).

Section 552.101 excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information (“CHRI”) maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084. Therefore, the county must withhold CHRI obtained from the DPS and from NCIC/TCIC under section 552.101 of the Government Code. Please note, however, that driving record information is not confidential under chapter 411, see *id.* § 411.082(2)(B), and must be disclosed.

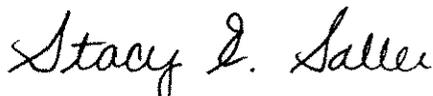
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<sup>1</sup>You claim that a portion of one letter that refers to the certification of a juvenile should be withheld under section 552.108 because that case is still under prosecution by the district attorney. However, the letter has already been disclosed to the requestor. A governmental body may not selectively disclose information. Gov’t Code § 552.007(b). As section 552.108 may be waived by a governmental body and the county has previously disclosed this information to the requestor, the county may not now claim that section 552.108 excepts this requested letter from disclosure.

Similarly, the county's compilation of an individual's criminal history is also protected from disclosure under section 552.101. Section 552.101 encompasses an individual's constitutional and common-law privacy rights. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We therefore conclude that the county must withhold from required public disclosure the criminal history information gathered by the county under section 552.101 of the Government Code. *See id.*

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

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 38310

Enclosures: Submitted documents

cc: Mr. Joe D. Thomas  
112 1/2 Harvey Apt. C  
Gainesville, Texas 76240  
(w/o enclosures)