



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 13, 1996

Ms. Judith Hunter  
Paralegal  
City Attorney's Office  
P.O. Box 409  
Georgetown, Texas 78627

OR96-0700

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39472.

The City of Georgetown (the "city") received a request for "everything and anything pertaining to" offense report service number 96-3039. You have submitted the requested offense report to us for review. You contend that this report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup>

The informer's privilege, incorporated into the Open Records Act by section 552.101, protects the identity of one who reports a violation or possible violation of the law to officials having the duty of enforcing that law. *See Roviario v. United States*, 353 U.S. 53, 59 (1957); Open Records Decision No. 515 (1988) at 2. The privilege also protects the content of the informer's communication to the extent that it identifies the informant. *Roviario*, 353 U.S. at 60. However, once the identity of the informer is known to those who would have cause to resent the communication, the privilege is no longer applicable. *Id.* at 60.

Two informers' names appear on the offense report that you submitted to us. These informers reported an offense of theft to the Georgetown Police Department. Their identities are presumably unknown to those who would have cause to resent their communications to the police. Thus, pursuant to section 552.101, you may withhold the

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<sup>1</sup>You also raise concerns about Open Records Letter No. 96-0249 (1996). We have addressed these concerns in a separate letter.

informers' identities and those portions of their statements that identify them, if any, from disclosure.

You also contend that the offense report is excepted from disclosure in its entirety by section 552.108, the "law enforcement" exception. 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).

The theft investigation documented in the offense report at issue "is suspended but remains pending and may result in charges being filed." In a previous decision, this office ruled information not held to be public in the Open Records Decision No. 127 (1976) could be withheld from disclosure in a suspended case where release of the remaining information "would clearly jeopardize the investigation if it is once again initiated, as it may well be." Open Records Decision No. 408 (1984) at 7. The circumstances you present here are similar to those considered in Open Records Decision No. 408 (1984). Consequently, pursuant to section 552.108, the city may withhold all but the information generally found on the first page of an offense report.

We stress that the city must release the *types* of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of their location within an investigation file. The content of the information determines whether it must be released in compliance with the *Houston Chronicle Publishing Co.* case, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by the *Houston Chronicle Publishing Co.* case.

The *Houston Chronicle Publishing Co.* case requires the city to release a detailed description of the offense. The offense report at issue contains a detailed description of the offense that also identifies the informants in the case. As previously discussed, the identities of the informers are protected under section 552.101. However, in order to comply with the requirements of the *Houston Chronicle Publishing Co.* case and Open Records Decision No. 127 (1976), the city still must release a detailed description of the offense that does not identify the informers. The city must also release the other *types* of information that the *Houston Chronicle Publishing Co.* court characterizes as front page offense report information, regardless of where those *types* of information happen to appear on the offense report form used by the Georgetown Police Department. In addition to the identities of the informers, the city may also withhold from disclosure

those *types* of information that do not *generally* appear on the first page of an offense report.

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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 39776

Enclosures: Submitted documents  
Summary of Open Records Decision No. 127 (1996)

cc: Mr. Karl Reich  
Sun City, 5350 RM 2338  
Georgetown, Texas 78628  
(w/Summary of Open Records Decision No. 127 (1996))