



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Ms. Elaine S. Hengen
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR97-0482

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104255.

The El Paso Police Department (the "department") received a request for records concerning Complaint Report No. 96-070082. You state that the department has released to the requestor a copy of the incident report and the arrest supplement with redaction of the address of the occurrence as well as the driver's license and social security numbers of the arrested individuals. You assert that the redacted information as well as other documents in the file, some of which are filed in El Paso County courts, are excepted from required public disclosure based on section 552.108. You assert that the social security numbers are additionally excepted from public disclosure by section 552.101 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[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. Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Information normally found on the front page of an offense report is generally considered public. *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). Furthermore, court-filed documents are also generally considered public. See *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). We believe the requested information is "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime."

The court in *Houston Chronicle* concluded that the public has a constitutional right to the police blotter, which contains basic information about the arrested person, including the arrestee's social security number. See Open Records Decision No. 127 (1976) at 3. We believe the arrestee's driver's license number is analogous to the sort of basic information about the arrested person that the *Houston Chronicle* court held to be available to the public, rather than the sort of evidentiary information that court found section 552.108 protects. Thus, we conclude that section 552.108 does not except from public disclosure the arrestees' social security numbers or driver's license numbers in this instance.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by statute. You state that because the social security numbers are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990, the numbers are not confidential under section 405(c)(2)(vii) of title 42 of the United States Code. You suggest that the public release of the arrestees' social security numbers will violate the Privacy Act of 1974, section 552a of title 5 of the United States Code. Section 7(b) of the Privacy Act requires the department to inform an individual whose social security number it obtains the statutory or other authority such number is obtained, and what uses will be made of the number. 5 U.S.S. § 552a note; see generally Attorney General Opinion DM-286 (1994). However, the Privacy Act does not restrict the disclosure of a social security number under the Open Records Act. Open Records Decision No. 622 (1994) at 2. The department may not withhold from disclosure the social security numbers based on section 552.101.

We turn to the information on the offense report that discloses the premises involved in the offense. The *Houston Chronicle* court found a constitutionally protected right of the press and the public to information on the offense report that shows the premises involved in the offense. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d at 186. In this case, however, you point out that the premises involved is the home of a police officer. Section 552.117 of the Government Code excepts from required public disclosure a police officer's home address. In determining the public's right to law enforcement records, the court in *Houston Chronicle* balanced the competing interest of the people's right to know information about crime in the community with the state's interest in preventing excess publicity that might lead to a denial of due process and endanger the prosecution. In striking that balance, the *Houston Chronicle* did not have the opportunity to consider a situation in which a crime occurred at a police officer's home. Had it done so, and in light of the legitimate concerns for the safety of law enforcement officer as recognized by the legislature, see Gov't Code § 552.117, we do not believe the court would have found a constitutional right to know the premises involved in an offense that occurred at a police officer's home. Accordingly, the department must withhold from public disclosure in this instance the information about the premises involved. Gov't Code §§ 552.108, .117.

In conclusion, except for front page offense report information, other than the premises involved, and any court-filed documents, we conclude that the requested records are excepted from required public disclosure. We are resolving this matter with this 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 may 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,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, written over a light blue horizontal line.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 104255

Enclosures: Submitted documents

cc: Mr. John D. Valenzuela
7350 Matamoros
El Paso, Texas 79915
(w/o enclosures)