



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 19, 1997

Honorable Karren S. Price  
District Attorney  
Shelby County  
200 San Augustine Street  
Center, Texas 75935

Honorable Robbie Williams  
Justice of the Peace  
200 San Augustine Street, Suite 9  
Center, Texas 75935

OR97-1852

Dear Ms. Price and Justice Williams:

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# 107952.

The Shelby County District Attorney's Office (the "district attorney") and the Shelby County Justice of the Peace Precinct 1 Office ("Precinct 1") received requests for "copies of any affidavits relating to the recent triple murder case . . . [and] copies of any and all search warrants and arrest warrants relating to the same case."<sup>1</sup> In response to the request, you submitted to this office for review the information which you assert is responsive. You claim that the submitted 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.

The requestor argues that the affidavits are a public record, since they have been filed in a Texas court.<sup>2</sup> You explain, on the other hand, that the requested affidavits, which relate

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<sup>1</sup>Since you have not submitted any search or arrest warrants, we assume that you will release this information to the requestor should it exist. We note that chapter 552 does not apply to information that does not exist. *See* Open Records Decision No. 555 (1990).

<sup>2</sup>We note that the submitted records, titled "Affidavit for Arrest Warrant," have been signed by the Justice of the Peace for Precinct 1.

to “evidentiary search warrants,” have not been filed with any agency, and “the originals remain part of the investigative file.” Therefore, it appears that you are asserting that the affidavits are not part of the court’s files.<sup>3</sup>

If the requested warrant affidavits have been filed with a court, they are a part of the public record and must be released.<sup>4</sup> See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). Furthermore, if the probable cause affidavits were made to support a search warrant, the affidavits are public by statute if they have been executed. See Code Crim. Proc. art. 18.01(b). Therefore, the district attorney may not withhold an executed search warrant affidavit from required public disclosure under section 552.108 of the Government Code. If, however, the affidavits have not been filed with a court or executed, we will consider whether the records are protected from disclosure by section 552.108 of the Government Code.

Section 552.108 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). The submitted information appears to deal with the detection, investigation, or prosecution of crime. Since the records at issue come within the purview of section 552.108, we conclude that the information may be withheld under this section. Therefore, except for court filed public documents and executed search warrant affidavits, section 552.108 of the Government Code excepts the requested records from required public disclosure. On the other hand, you may choose to release all or part of the information that is not otherwise confidential by law. Gov’t Code § 552.007.

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.

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<sup>3</sup>This situation raises a question of fact. This office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). Thus, depending on the circumstances, the district attorney may be able to withhold the affidavits or may be required to release the requested records.

<sup>4</sup>The law enforcement exception” was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. See Open Records Decision Nos. 434 (1986) at 2, 287 (1981) at 2 (whether information falls within section 552.108 must be determined on a case-by-case basis).

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/alg

Ref.: ID# 107952

cc: Mr. Andy Shaw  
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(w/o enclosures)

