



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1997

Ms. Monica Z. Notzon
First Assistant District Attorney
49th Judicial District Attorney's Office
Webb County
P.O. Box 1343
Laredo, Texas 78042-1343

OR97-2598

Dear Ms. Notzon:

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# 110644.

The Webb County District Attorney's Office (the "district attorney") received a request for "an opportunity to review and copy all files, records, electronically stored information and any other documents in the possession of the Webb County District Attorney's Office pertaining to Rogelio Rangel Hernandez," in reference to a number of specified cause numbers. Specifically, the requestor seeks documents concerning "(1) the investigation of the criminal incident, (2) the trial of the underlying matter, and (3) the investigation or prosecution of any proceedings after trial." You have submitted the information which you contend is responsive to the request. You claim that the requested information is excepted from disclosure under section 552.108, and you cite *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996), to support this claim.¹ We have considered the exception you claim and have reviewed the documents at issue.

Initially, we note that in your reply letter, you notified the requestor that all of the criminal investigation and prosecution records are excepted pursuant to section 552.108, while the request for "trial records" is "broad and vague." In addition, you informed the requestor that "court documents, such as motions, judgments, transcripts . . . are available public records of the district clerks office of the counties in which the cases were filed."

¹We note that the *Holmes* court construed the former section 552.108, which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, the former section 552.108 and the *Holmes* interpretation of the former section 552.108, are superseded by the amended section discussed infra.

First, we address the issue of a vague or broad request. We note that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Open Records Decision Nos. 563 (1990), 561 (1990). Furthermore, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). In other words, if the district attorney's office is able to identify documents in its possession from which the requestor could obtain the information that he is seeking, the district attorney should provide the requestor access to those documents, unless the information is subject to an exception.²

We next consider the issue of requested records which may be in the possession of other district clerk's offices as you claim. Section 552.002(a) defines the term "public information" to include information that is "collected, assembled, or maintained . . . (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a) (emphasis added). You claim that some of the requested documents are not in the custody of the Webb County district attorney's office. Based on your assertions, we conclude that to the extent that the requested information is not in the possession or control of the Webb County district attorney's office, section 552.002 does not require compliance with that portion of the request.

Before we consider the application of section 552.108 to the submitted records, we note that among the records you have submitted to our office for review you included what appear to be documents filed with a court. If any of the submitted documents have been filed with a court, then they are part of the public record and must be released. *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). If, however, the information has not been filed with a court, we will consider whether the records are protected from disclosure by section 552.108 of the Government Code.

The Seventy-fifth Legislature amended section 552.108 of the Government Code to read as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

²We note that Chapter 552 of the Government Code does not apply to information that does not exist. *See* Open Records Decision No. 555 (1990). Nor does chapter 552 require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ *dism'd*); *see also* Open Records Decision No. 87 (1975).

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Gov't Code § 552.108. You state section 552.108 is applicable to the submitted information, because the information relates to "a capital murder case which is pending state habeas." You further state that a petition for discretionary review ("PDR") "is being sought at the U.S. Supreme Court;" we assume you mean that a *writ of certiorari* has been filed in this matter. Based on your representations, we conclude that the submitted records relate to a pending criminal investigation or prosecution. As the requested records relate to a pending criminal prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. We conclude that the district attorney's office has shown the applicability of section 552.108(a)(1) to the submitted information.

We note, however, that you must release the type of information that is considered to be basic front page offense report information even if this information is not actually located on the front page of the offense report. *See generally* Gov't Code § 552.108(c) (basic information about arrested person, arrest and crime not excepted by section 552.108); *Houston Chronicle Publ'g 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). Therefore, except as noted, the remaining information may be withheld pursuant to section 552.108(a)(1).³

³We note that some of the submitted information is confidential. *See* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref: ID# 110644

Enclosures: Submitted documents

cc: Mr. Jim Marcus
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(w/o enclosures)