



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1997

Mr. Scott A. Durfee
General Counsel
Harris County District Attorney
District Attorney's Building
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR97-2609

Dear Mr. Durfee:

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# 110482.

The Harris County District Attorney (the "district attorney") received a request for "the complete contents of both the Houston Police Department and District Attorney's offices regarding the incident of May 21, 1997. D.A. Log no. 356054; D.A. No. 0288 . . . pertaining to Michael Harris . . ." You state that certain information in the file that was filed with the district clerk, as well as "first page offense report information," will be made available to the requestor.¹ You assert that the remainder of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation 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: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the

¹Information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *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). We stress that the district attorney must release the type of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of its 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.

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.

(b) An 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 is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (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 [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

See Act of June 1, 1997, H.B. 951, §1, 75th Leg., R.S. (to be codified at Gov't Code § 552.108).

You state that the requested information relates to the case of *The State of Texas v. Michael Harris*, Cause No. 753575, in the 183rd District Court, Harris County, Texas, a criminal prosecution for theft in which the defendant Michael Harris was no-billed by a Harris County grand jury. You therefore argue that the requested information is information dealing with the prosecution of crime in relation to an investigation that did not result in conviction or deferred adjudication, and is an internal record maintained for internal use in matters relating to prosecution in relation to an investigation that did not result in conviction or deferred adjudication. On this basis, we conclude you have demonstrated the applicability of section 552.108(a)(2) to the requested information and thus, you may withhold the information from disclosure pursuant to this section.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 110482

Enclosures: Submitted documents

cc: Ms. Judy Frank
Quality Record Services
20527 Marilyn Lane
Spring, Texas 77388
(w/o enclosures)