



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1997

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-2708

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111794.

The City of Houston Police Department (the "department") received a request for all records pertaining to a particular individual. The requestor is authorized by the subject of the requested information to receive the information.¹ Although you will release some of the requested information to the requestor, you assert that the remaining requested information is excepted from disclosure by section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Because the requestor is authorized by the individual who is the subject of the information to receive the information, the individual's privacy right is not implicated in this instance. *See Gov't Code* §§ 552.023, .229.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision* Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that some of the submitted documents are court records. Documents filed with the court are public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Additionally, the submitted documents include affidavits supporting search warrants which were executed. An affidavit supporting a search warrant is made public by statute if it has been executed. *See* Code Crim. Proc art. 18.01(b). Therefore, the department may not withhold the affidavits supporting the executed search warrants from required public disclosure under section 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

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

(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[.]

.....

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You state that the remaining requested information relates to a murder investigation in which no charges have been filed and “there are no convictions or deferred adjudications arising from the investigation.” We conclude that you may withhold the submitted information under section 552.108(a)(2). However, we note that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.3d 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). You inform us that you have released the front page incident report information. Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref: ID# 111794

Enclosures: Submitted documents

cc: Ms. Roxanne M. Gonzalez
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(w/o enclosures)