



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR98-0138

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID#112247.

The City of Friendswood (the "city"), which you represent, received a request for "[c]opies of all affidavits for search warrants that have been issued related to the abduction-killing of Laura Kate Smither as well as copies of all return and inventory lists related to such search warrants." You contend that the requested documents are excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

Article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that

¹The requestor contends that you did not seek an open records decision from this office within ten business days of receiving the request for information as required by section 552.301 of the Government Code. It appears from the submitted correspondence that the city received the request on October 28, 1997. You requested a decision from this office on November 11, 1997, the tenth business day following October 28, 1997. Therefore, based on the information we have been provided, we conclude that the city has met the requirements of section 552.301.

probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed.* [Emphasis added.]

Information specifically made public by law outside the Open Records Act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that the city must release the requested search warrant affidavits in their entirety and without delay.

Although we are unable to determine whether the return and inventory lists have been filed with a court, we note that documents filed with a court are generally considered public. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, if the return and inventory lists have been filed with a court, they must be released.

Section 552.108 of the Government Code provides in part:

(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 Section 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 detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

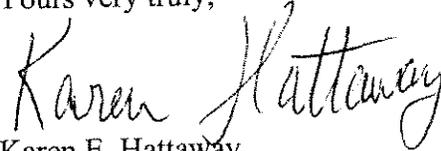
You state that the return and inventory lists relate to a pending criminal investigation. Based upon this representation, we conclude that the release of these documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 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) (court delineates law enforcement interests that are present in active cases). Therefore, if the return and inventory lists have not been filed with a court, the city may withhold them from disclosure under section 552.108(a)(1).²

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

²As we are able to resolve this matter under section 552.108, we need not address your other arguments against disclosure of the return and inventory lists.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 112247

Enclosures: Submitted documents

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