



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1998

Mr. Jim L. Lambeth
Assistant Criminal District Attorney
Smith County Courthouse
Tyler, Texas 75702

OR98-0920

Dear Mr. Lambeth:

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# 114318.

The Smith County Sheriff's Department (the "sheriff") received a request for all information held by the sheriff that pertains to a 1980 murder investigation. You assert that the responsive documents are excepted from disclosure pursuant to section 552.108 of the Government Code. Representative samples of the records at issue were submitted to this office for review.¹ In support of your assertion that section 552.108 protects the information from disclosure, you cite to *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996).

We note that *Holmes* construed section 552.108 prior to its amendment by the Seventy-fifth Legislature. Prior to amendment, section 552.108 excepted 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." However, section 552.108 was amended and reads as follows:

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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; 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 the requirements of Section 552.021 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 Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). You have not stated that the requested information pertains to an ongoing criminal investigation or prosecution or explained how its release would interfere in some way with the detection, investigation, or prosecution of crime.

A governmental body claiming that section 552.108(a)(2) is applicable should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. However, in this situation you indicate that the murder concluded in convictions. You state that there is a pending habeas corpus action, but we note that in this situation there has been a "conviction" within the meaning of section 552.108(a)(2).

You do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, section 552.108(a)(3) is inapplicable to the documents at issue.

You state that the request seeks "internal records that deal with the detection, investigation or prosecution of crime." Section 552.108(b), which generally mirrors section 552.108(a), contains specific exceptions for internal records that are maintained for internal use in matters relating to law enforcement or prosecution. A governmental body asserting that section 552.108(b)(1) is applicable must show that release of the internal records would interfere with law enforcement or prosecution. However, you have made no such showing.

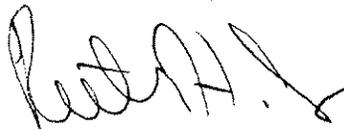
To show the applicability of section 552.108(b)(2), a governmental body should demonstrate that the requested internal records relate to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. However, as previously discussed, the requested records pertain to a case that concluded in convictions. Thus, section 552.108(b)(2) is inapplicable.

You do not indicate that the request encompasses internal records prepared by an attorney representing the state or that these records reflect the mental impressions or legal reasoning of an attorney representing the state. Section 552.108(b)(3) is inapplicable to the requested records. We note that you make no other arguments against releasing these records and the representative sample provided to this office contains no confidential information. The records at issue must be provided to the requestor.

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,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 114318

Enclosures: Submitted documents

cc: Mr. Ben I. Leonard
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(w/o enclosures)