



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Mr. Bruce P. Sadler
Assistant District Attorney
Counties of Potter and Armstrong
501 Fillmore, Suite 1A
Amarillo, Texas 79101-2449

OR98-1176

Dear Mr. Sadler:

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# 114616.

The Potter and Armstrong District Attorney (the "district attorney") received an open records request for the names of merchants, the amount of checks, the date the checks were written, and the dates of collection efforts by the district attorney's office, including any bad checks written by a named individual.

You inform us that the district attorney's office seeks to withhold the documents pursuant to section 552.108 of the Government Code. We have considered your arguments and reviewed the information submitted.

Section 32.41 of the Texas Penal Code, titled "Issuance of Bad Checks," provides in part:

(e) A person charged with an offense under this section may make restitution for bad checks. *Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office.* In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) An offense under this section is a Class C misdemeanor. [Emphasis added.]

Article 102.007 of the Code of Criminal Procedure, formerly, Code of Criminal Procedure article 53.08, grants the district attorney authority to collect fees in connection

with the processing of checks issued or passed in a manner that makes the issuance or passing a violation of law. *See* Open Records Decision No. 518 (1989). However, the fees collected under subsection (c) of the article are deposited in the county treasury in a fund to be administered by the district attorney and expenditures from this fund are at the sole discretion of the district attorney and may be used only to defray the salaries and expenses of the prosecutor's office. Code Crim. Proc. art. 102.007(f).

We note initially that the information submitted contains the individual's driver's license number. Although one may assert the applicability of section 552.101, which protects from disclosure information made confidential by other law, we believe that the appropriate exception in this instance for driver's license numbers is section 552.130 of the Government Code, which provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of the state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

You must withhold that information as it is protected from disclosure under section 552.130.

Next, we observe that section 552.108 of the Government Code reads 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 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.

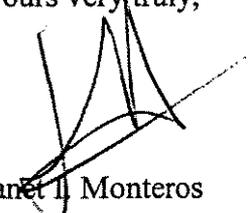
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You indicate that the case relating to the individual listed in the requested information deals with the investigation of crime that did not result in conviction or deferred adjudication. You argue that absent a complaint, there was never a formal allegation against the individual of any crime or criminal conduct. We agree that section 552.108(a)(2) applies in this instance as the investigation did not result in a conviction or deferred adjudication. We note, however, 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.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, with the exception of the types of information that is generally located on the front page of an offense report, you may withhold the submitted documents under section 552.108(a)(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 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,



Janet J. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 114616

Enclosures: Submitted documents

cc: Mr. Herman Guetersloh
Staff Writer
Amarillo Globe-News
P.O. Box 2091
Amarillo, Texas 79166
(w/o enclosures)