



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1275

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116072.

The City of Houston Police Department (the "department") received a request for incident report number 031451298K, including an audiotape. You state that the audiotape does not exist and assert that the incident report is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents submitted.

You inform us that the requested audiotape does not exist. The Texas Open Records Act applies only to information in existence at the time a governmental body receives a request for the information. Open Records Decision Nos. 452 (1986), 342 (1982). Thus, you need not comply with the request for the audiotape.

Section 552.108, the "law enforcement exception," excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation or prosecution of crime. Gov't Code § 552.108(a)(1). You state that the requested information relates to a pending criminal prosecution, and that release of the requested information would interfere with the prosecution of the case. Accordingly, we find that release of the requested information 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).

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*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, except for basic information, the requested information is excepted from disclosure under section 552.108(a)(1).¹ 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.*

As we have resolved the matter under section 552.108, we need not address your other claim against public disclosure. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref: ID# 116072

Enclosures: Submitted documents

cc: Ms. Rita Mitchell
10150 Springwood Forest
Houston, Texas 77080
(w/o enclosures)

¹Basic information in an offense report generally may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).