



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1998

Ms. Claudia T. Bridges
Assistant Criminal District Attorney
Waller County
836 Austin Street, Suite 105
Hempstead, Texas 77445

OR98-1939

Dear Ms. Bridges:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117400.

The Waller County District Attorney has received seven requests for information concerning seven criminal cases pending before the Waller County District Courts. The requestors specifically seek the following information about each case:

details of the offense committed, location of the crime, identification and description of the complainant, premises involved, the time of the occurrence, property involved, vehicles involved, description of the weather, identification and description of the witnesses, a detailed description of the offense in question, and the name of the investigation officer.

You claim that the requested information is excepted from disclosure by sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents at issue.¹

¹In 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.

You first claim that the requested information may be withheld under the "law enforcement" exception. Section 552.108 of the Government Code provides:

(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;

(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;

(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.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 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. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the requested information concerns seven cases that are pending criminal prosecution. You have provided this office with the indictments in those causes. Given the circumstances, we believe that you have shown that the release of one category of the requested information is protected under section 552.108. Gov't Code § 552.108(a)(1). *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); Open Records Decision No. 216 (1978).

Most of the requested information, however, is not excepted from disclosure by section 552.108. It is basic information about an arrested person or a crime. Gov't Code § 552.108(c). Information normally found on the front page of an offense report is generally considered public. *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) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, we find that you may withhold only the information reflecting the identification and descriptions of the witnesses under section 552.108.

You additionally argue that you may withhold the name of the arresting officer in the case against Mr. Curte Bailey, even though this is basic information, because the officer is an undercover operative. The requestor points out, however, that the officer's identity has been revealed in the indictment of Mr. Bailey. It appears that the indictment has been filed with the court, and we recognize that documents filed with a court are public documents and must generally be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Consequently, we do not believe that you have shown why the arresting officer's identity should be withheld at this time under section 552.108 of the Open Records Act. Open Records Decision Nos. 211 (1978), 143 (1976).

You next argue that the remaining categories of information must be withheld because they are confidential by law under article 39.14 of the Code of Criminal Procedure and Rules 611 and 614 of the Rules of Criminal Evidence. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The rules you cite govern the discovery of information and the testimony of witnesses in

criminal proceedings before a court. They are not exceptions to disclosure under the Open Records Act. Discovery privileges are not covered under section 552.101 of the Government Code; such information is "privileged" only to the extent that a court in a particular case deems it to be so. Open Records Decision No. 575 (1990); *see* Gov't Code §§ 552.005, .006. Thus, we do not believe that the requested information is excepted from disclosure under the Open Records Act in conjunction with the rules of criminal procedure or criminal evidence.

You also contend that the bank account information concerning the prosecution of Mr. Darrell Lee is excepted from disclosure based on a right of privacy. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Although it is not clear that the requestor seeks the account information in his request, we do not believe it is protected by a right of privacy in this instance. First, the information is contained in the indictment filed with the court. *Star-Telegram*, 834 S.W.2d at 57-58. Second, the account number deals with the public prosecution of an alleged forgery on the account. This account information may not be withheld based on a right of privacy.

Finally, you contend that the remaining requested information may be withheld under sections 552.103 and 552.107 of the Government Code. We do not believe that section 552.103 is applicable in this instance. *See Houston Chronicle*, 531 S.W.2d at 187; Open Records Decision Nos. 597 (1991) (basic information in an offense report generally may not be withheld under section 552.103), 349 (1982) (Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information.), 320 (1982). Furthermore, this office has stated that the work product privilege under sections 552.103 and 552.111 does not extend to "facts an attorney may acquire." Open Records Decision No. 647 (1996) at 4 (citing *Owens-Corning Fiberglass v. Caldwell*, 818 S.W.2d 749, 750 n.2 (Tex. 1991)). Moreover, the privilege does not protect memoranda prepared by an attorney that contain only a "neutral recital" of facts. *See Leede Oil & Gas, Inc. v. McCorkle*, 789 S.W.2d 686, 687 (Tex. App.--Houston [1st Dist.] 1990, no writ); *see generally Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (request for district attorney's entire file too broad). The requested information here is nothing more than the basic facts of the case.

Section 552.107 is also not implicated. Section 552.107(1) excepts from public disclosure information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990). Basically factual information is not protected. *Id.* The requested information neither reflects confidential communications from the client to the attorney nor reveals the attorney's legal advice or opinions.

In conclusion, you may withhold information revealing the identification and description of witnesses under section 552.108. You must release the requested details of the offenses committed, location of the crimes, identification and description of the complainants, premises involved, the time of the occurrences, property involved, vehicles involved, descriptions of the weather, a detailed description of the offenses in question, and the names of the investigation officers in each of the seven pending cases.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 117400

Enclosures: Submitted documents

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