



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 2, 1998

Mr. Cary L. Bovey
Brown McCarroll Sheets
& Crossfield, L.L.P.
309 E. Main Street
Round Rock, Texas 78664-5246

OR98-2083

Dear Mr. Bovey:

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# 117704.

The City of Llano (the "city"), which you represent, received an open records request for the following categories of information:

1. Offense report and file of C97106.
2. All offense reports of Tim McCray on charges of Possession of Marijuana for the year of 1997 to the date he left the City employment.
3. Any and all offense reports where Tim McCray used a "drug dog" in the search for drugs and the dates of such searches.
4. Copy of the training records of the "drug dog" used in the search re April 18, 1997 in Llano Senior High School parking lot search. All papers on this dog as to who trained the dog and when.
5. Copy of training records, tests and related activities where Officer Tim McCray was educated and trained to handle a "drug dog" in a search.

You first contend that most of the requested records are excepted from required public disclosure pursuant to section 552.103 of the Government Code because the records relate to a pending criminal prosecution of an individual for possession of marijuana. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

governmental body is a party. Open Records Decision No. 588 at 1 (1991). In this instance, you have not established that the city is a party to the criminal litigation. We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.103 in this instance. See Open Records Decision No. 469 (1987) and authorities cited therein. Accordingly, the city may not withhold any of the requested information pursuant to this exception.

You next contend that, except for the categories of information specifically made public in *Houston Chronicle Publishing 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), the requested information is excepted from required public disclosure pursuant to section 552.108 of the Government Code.

Section 552.108 of the Government Code excepts from required public disclosure in pertinent part

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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.

....

(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 . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(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.

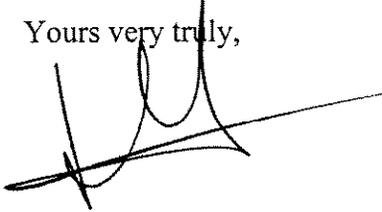
....

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Because you have informed us that the file on Case No. C-97-106 pertains to a pending criminal prosecution, we conclude that you have met your burden of establishing that the release of these records at this time could interfere with law enforcement or prosecution. You therefore may withhold most of these records at this time pursuant to section 552.108(a)(1).¹ You have not, however, provided this office with any rationale for concluding that the remaining requested information is excepted from required public disclosure pursuant to section 552.108. We therefore conclude that the city must release the remaining information to the requestor in its entirety, with the following exception.

We note that one "Narrative Report" you submitted to this office contains information directly derived from a medical record. Section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), makes confidential "[c]ommunications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient" and "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Because the narrative report contains information that appears to have been directly obtained from medical records, such information may be disclosed only in accordance with the MPA. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). We have marked in brackets the information that the city may release only in accordance with this statute.

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 I. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/nc

Ref.: ID# 117704

¹As noted above the city has released the "basic information" regarding this offense pursuant to section 552.108(c) of the Government Code.

Enclosures: Submitted documents

cc: Mr.S. Lee Wingate
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(w/o enclosures)