



Office of the Attorney General
State of Texas

September 29, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Mike Siebert
Criminal District Attorney
Eastland County
Courthouse, 2nd Floor
Eastland, Texas 76448

OR98-2332

Dear Mr. Siebert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118465.

The Office of the Criminal District Attorney of Eastland County (the "district attorney's office") received a request for the following:

any and all records regarding or relating to the death of William Euell Poyner . . . specifically . . . autopsy reports, preliminary autopsy reports, officer's reports, investigative reports, 911 tapes, and tapes of any calls to the Eastland County Sheriff's Department or other law enforcement office by Maxine Poyner requesting assistance.

You state that the district attorney's office does not have all of the specific information requested.¹ You do, however, contend that section 552.108 of the Government Code excepts the following documents from disclosure: preliminary autopsy reports,² officer's reports, and

¹You state that the district attorney's office does not possess the 911 tapes or the tapes of any other calls because they are in the possession of the Texas Rangers and other parties. We note that section 552.002 of the Government Code defines public information to include information maintained for a governmental body to which the governmental body has right of access. Therefore, if the district attorney's office has a right of access to the tapes, the district attorney's office cannot withhold the tapes from the requestor merely because the tapes are in the possession of another entity.

²The request for information distinguishes between autopsy reports and preliminary autopsy reports. Because you only seek to withhold a preliminary autopsy report, we assume that you have released the final version of the full autopsy report with detailed findings to the requestor. *See* Crim. Proc. Code art. 49.25, § 11; Open Records Decision Nos. 529 (1989), 21 (1974).

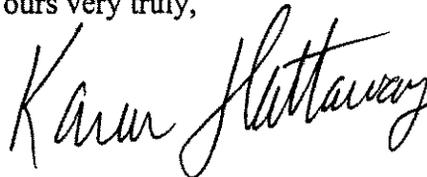
investigation reports. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” You state that the submitted documents relate to an investigation that did not result in conviction or deferred adjudication. You inform us that the case will not be prosecuted because the grand jury refused to indict. Based upon your representations, we find that section 552.108(a)(2) is applicable to the submitted documents.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *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). Thus, you must release 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.³ Although section 552.108(a)(2) authorizes you to withhold the remaining 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.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

³We note that radio logs must be released to the extent that they contain the type of information found to be public in *Houston Chronicle*. Open Records Decision No. 394 (1983).

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Enclosures: Submitted documents

cc: Mr. James J Elliott
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(w/o enclosures)