



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 21, 1998

Mr. Paul Wieneskie  
Cribbs & McFarland  
1000 West Abram  
Arlington, Texas 76094-0060

OR98-2466

Dear Mr. Wieneskie:

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# 118932.

The Euless Police Department (the "department") received an open records request from an attorney for the police records pertaining to his client's recent DWI arrest. Included among the records requested are recordings of the 911 telephone call that prompted the arrest, conversations between the police dispatcher and the police units involved, the reports filed by the police officers, and a "written log or printout" pertaining to the police dispatch.<sup>1</sup> You indicate that the department will make available to the requestor the "front page information" from the offense report. You seek to withhold the remaining requested information from the requestor pursuant to section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation 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[.]" Because you have informed us that the records at issue pertain to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. The department therefore

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<sup>1</sup>The requestor also seeks a copy of any videotape that was made of his client. You inform us that the department has released any such existing videotape to the Tarrant County District Attorney's Office and that "[t]hese video tapes are no longer in the possession or subject to the control of the City of Euless." The department therefore need not comply with this aspect of the request. See Open Records Decision No. 445 (1986) (Open Records Act does not require governmental body to obtain information not in its possession).

may withhold most of the requested information at this time pursuant to section 552.108(a)(1).<sup>2</sup>

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The department therefore must release these types of information, including a detailed description of the offense, in accordance with *Houston Chronicle Publishing Company 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), regardless of where that information is found. In this regard, we further note that in Open Records Decision No. 394 (1983), this office determined that there was no qualitative difference between the information contained in police dispatch records and that which was expressly held to be public in *Houston Chronicle*. See also Open Records Decision No. 127 (1976) (summarizing holding in *Houston Chronicle*). Accordingly, we conclude that, with one possible exception discussed below, section 552.108 does not except from disclosure any of the dispatch log information at issue here.

You seek to withhold the identity of the individual who made the 911 call pursuant to the “informer’s privilege.” The informer’s privilege has been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer’s privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

The “informer’s privilege” protects the identity of persons who report violations of the law. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978).

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<sup>2</sup>Although you also raise section 552.108(a)(2) with regard to this information, we note that this section is intended to protect information pertaining to criminal investigations that have concluded and did not result in a conviction or deferred adjudication, and thus is inapplicable here. Additionally, because we resolve your request under section 552.108(a)(1), we need not address the applicability of section 552.108(b) or 552.111 of the Government Code.

Assuming neither the requestor nor his client is aware of the identity of the individual who placed the 911 call, we agree that the department may withhold this individual's identity pursuant to the informer's privilege in conjunction with section 552.108(a)(1).

Finally, we note that the requestor, as the attorney of the criminal defendant, has a statutory right of access to the results of his client's intoxilyzer test pursuant to section 724.018 of the Transportation Code. *See also* Open Records Decision No. 478 at 2 (1987) (regarding predecessor statute, V.T.C.S. art. 6701i-5, § 3(e)). Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to the law-enforcement exception. *See, e.g.*, Open Records Decision No. 613 (1993). Accordingly, the department must release the intoxilyzer results as well as the "front page" offense report information to the requestor. The remaining information at issue may be withheld from the requestor at this time pursuant to section 552.108(a)(1).

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/RWP/nc

Ref: ID# 118932

Enclosures: Submitted documents  
Submitted tape recording

cc: Mr. Myron Kimball  
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(w/o enclosures)