



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1998

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

OR98-2934

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 119879.

The City of Houston Police Department (the "department") received a request for "(1) offense report, and any and all (2) photographs, (3) video tapes, (4) audio tapes or other records," concerning a specified capital murder investigation. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You state that the "Police Department will make available to the requestor the Public Release Information portion of the requested incident report."² However, you assert that the remaining information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that among the records you have submitted to our office for review you included what appear to be documents filed with a court, including probable cause search warrant affidavits. To the extent the submitted records and search warrant affidavits

¹We 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.

²As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See 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).

have been filed with a court, they are a part of the public record and must be released.³ *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). Furthermore, if the probable cause affidavits were made to support a search warrant, the affidavits are public by statute if they have been *executed*. *See* Code Crim. Proc. art. 18.01(b). Therefore, the department may not withhold an executed search warrant affidavit from required public disclosure under section 552.108 of the Government Code. If, however, the records and affidavits have not been filed with a court or executed, we will consider whether the affidavits and the remaining records are protected from disclosure by section 552.108 of the Government Code.

We further note that the submitted documents include what appears to be an autopsy report which is considered to be public by statute. The Open Records Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). Section 11, article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, to the extent the requested information includes autopsy records, such information is a public record and must be released to the requestor. *See also* Open Records Decision No. 529 at 8 (1989).

Section 552.108, the "law enforcement," exception excepts from required public disclosure

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

(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[.]

³The "law enforcement exception" was not intended by the legislature to shield from public view information in the hands of police units that, absent special law enforcement needs or circumstances, would ordinarily be available to the public if possessed by a different governmental unit. *See* Open Records Decision Nos. 434 at 2 (1986), 287 at 2 (1981) (whether information falls within section 552.108 must be determined on a case-by-case basis).

....

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

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In your brief to this office, you explain that "the suspect, . . . , was tried by jury and was acquitted on all charges on August 12, 1998. . . . The second suspect, . . . , committed suicide while in custody awaiting trial." In reliance on your statements in support of the claimed exception, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) to the requested information. Although section 552.108(a)(2) authorizes you to withhold this information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law.⁴ 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 119879

Enclosures: Submitted documents

cc: Ms. Vanessa Legett
613 Kinney Avenue
Austin, Texas 78704-1432
(w/o enclosures)

⁴We note that some of the information in the submitted documents is also confidential by law. Therefore, if you choose to waive your right to withhold the information under section 552.108, we urge you to exercise caution in releasing the information to the public. See Gov't Code § 552.352.