



July 26, 1999

Lieutenant Arturo Valdez
Center Record Division
City of McAllen Police Department
1501 Pecan Street
McAllen, Texas 78501

OR99-2094

Dear Lieutenant Valdez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127988.

The McAllen Police Department (the "department") received a request for information concerning a particular offense. Records responsive to the request were submitted to this office for review. You contend that these records are protected from disclosure under section 552.108 of the Government Code.

We note initially that some of the documents at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be

consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 (1990) at 7. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked the documents to show which are medical records subject to the MPA.

We also note that some of the records appear to be documents that were filed with a court. Information filed with a court is generally a matter of public record. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). We therefore conclude that to the extent that the records at issue consist of public court records, those records must be released to the requestor. We will address your section 552.108 argument regarding the remaining records.

Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. Section 552.108(c) provides that basic offense report information is not protected from disclosure under section 552.108. Basic information is the type of information that is generally included on the front page of an offense report, including a detailed description of the incident. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

Since you assert that the records concern an ongoing criminal investigation, we agree that section 552.108(a)(1) protects the remaining documents at issue, except for the front page offense report information. Open Records Decision No. 216 at 3 (1978) (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). Thus, the front page information must be disclosed and the remaining portion of the report may be withheld from disclosure under section 552.108(a)(1).

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 127988

Encl. Submitted documents

cc: AIG Claims
77 W. Washington Street
Chicago, Illinois 60602
(w/o enclosures)