



November 17, 1999

Lt. Arturo Valdez
Center Record Division
City of McAllen Police Department
1501 Pecan Blvd.
McAllen, Texas 78501

OR99-3296

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128932.

The McAllen Police Department received a request for an incident report regarding the death of a specified individual. You claim that the requested 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 the submitted documents include documents that have been filed with a court. Documents filed with a court are generally considered public. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, documents of this type must be released to the requestor.

The submitted documents also include search warrant probable cause affidavits. Amended article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed*, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Act of May 10, 1999, 76th Leg., R.S., ch. 167, § 1, 1999 Tex. Sess. Law Serv. 637 (Vernon) (to be codified as an amendment to TEX. CRIM. PROC. CODE art. 18.01(b))(emphasis added).

Information specifically made public by law outside the act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that the department must release the search warrant probable cause affidavits if they were executed.

The submitted documents also include an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. ORD 525 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76 Leg., R.S., ch. 607, § 2, 1999 Tex. Sess. Law Serv. 3147, 3148 (Vernon) (to be codified as an amendment to CODE CRIM. PROC. art. 49.25, §11). This amendment took effect on September 1, 1999. *Id.* § 3. Therefore, the department must release the autopsy report to the requestor.¹

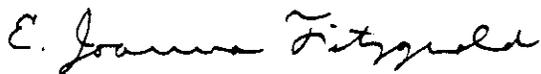
The rest of the requested records may be withheld under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” You state that the requested records relate to an ongoing criminal case. Based upon this representation, we conclude that the release of the requested records, other than those records subject to required release as described above, would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).

¹The submitted documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.

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 requested records. Although section 552.108(a)(1) 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.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 128932

Encl: Submitted documents

cc: Mr. Roberto J. Yzaguirre
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(w/o enclosures)