



April 6, 1999

Ms. Betty Marks  
General Counsel  
Department of Housing  
& Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

OR99-0920

Dear Ms. Marks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Open Records Act, (the "act"). Your request was assigned ID# 123272

The Texas Department of Housing and Community Affairs (the "department") received a request for

Copies of any and all subpoenas from all law enforcement activities, including but not limited to the FBI and the Texas Department of Public Safety, that were received by the Texas Department of Housing and Community Affairs in 1998.

Copies of any and all logs of TDHCA records provided in connection with the subpoenas cited above.

You cite a previous ruling of this office, Open Records Letter No. 98-2831, and claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. Except for the logs of TDHCA records, which you represent do not exist, you have provided this office with the responsive information. The requestor, *The Dallas Morning News*, (the "News"), has submitted a brief to this office and argues that the requested information must be released. We have considered the exception you claim and the News' brief. We have reviewed the submitted information.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The department received the request on December 4 and did not seek an open records decision until January 6, more than ten business days after the

department's receipt of the request. In this case, however, the department sought advice from this office and was told it might rely on a previous letter ruling that covers precisely the same information at issue here. The department acted in good faith and correctly relied on a previous letter ruling. See section 552.301(a). In addition, the department was not required to prepare new information in response to the request by the News. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. - San Antonio 1978, writ dismissed w.o.j.); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 (1986) 342 (1982), 87 (1975). No presumption arose that the requested information is public and must be released. Gov't Code § 552.302.

Open Records Letter No. 98-2831 (1998) noted:

Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987).

...

You also state that the department has been asked in writing and by phone not to release the requested information, including the subpoena. You explain that both the Federal Bureau of Investigation and the U.S. Attorney's Office both contend that release of the requested information, including the subpoena itself, "would interfere with the detection, investigation, and prosecution of federal crimes currently under" investigation. . . . Based upon your arguments and representations, we agree that the requested information may be withheld from disclosure under section 552.108. See Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure).

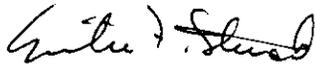
The News argues that a subpoena duces tecum cannot be withheld under section 552.108(c) because it contains only "basic information." The News correctly describes basic information to include the offense committed, location, identification and description of the complainant, premises, time of the occurrence, property involved, vehicles involved, weather, details of the offense in question, and the names of the investigating officers. The News cites Open Records Decision No. 597 (1991). We do not believe that the subpoena contains basic information as contemplated by section 108(c).

Finally, the News argues that the exceptions to disclosure contained in section 552.108 of the act do not apply to investigative subpoenas duces tecum because, like search warrants and affidavits in support of search warrants, the documents are public information which must be released. We disagree. Search warrant affidavits are expressly made public by statute. Tex. Code Crim. Proc. Ann. Art. 18.01(b). Grand jury subpoenas are not made public by statute. Search warrants are often filed with a court and become a court record. Matters occurring before a grand jury are generally secret and may be considered records of

the "judiciary."<sup>1</sup> Open Records Decision No. 513. The department may withhold the requested information as previously outlined in Open Records Letter No. 98-2831 (1998).

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,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

EFS\nc

Ref: ID# 123272

Enclosures: Submitted documents

cc: Mr. Paul Watler  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202-2799  
(w/o enclosures)

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<sup>1</sup>Rule 6(e) provides, in pertinent part:

(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or a person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

Rule 6(e) Fed. R. Crim. P.(Exceptions to rule not relevant to disclosure under act.)