



June 30, 1999

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR99-1817

Dear Mr. Alcorn:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127186.

The City of Grand Prairie (the "city") received a request for "any Arrest Warrant or Search Warrant which allowed Grand Prairie Police Officers and other law enforcement personnel to enter my home." You state that no search warrant exists, but you have submitted affidavits that may be responsive to the request.<sup>1</sup> You contend that the affidavits are protected from disclosure under section 552.108 of the Government Code.

We first note that section 552.108 is divided into subsections (a), (b), and (c). Subsection (c) provides that "basic information about an arrested person, an arrest, or a crime" is not excepted from disclosure under this section. Subsection (b) provides an exception for internal records of a law enforcement agency or prosecutor that are maintained for the agency or prosecutor's internal use in matters relating to law enforcement or prosecution. Subsection (a) is of broader scope, more generally concerning records held by a law enforcement agency or prosecutor that deal with the detection, investigation, or prosecution of crime. As you do not cite to a particular subsection of 552.108, we will address your arguments under section 552.108(a).

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<sup>1</sup>You state that you do not believe that the affidavits at issue are within the scope of the request for records. We note that a governmental entity has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 at 8 (1990). Section 552.222(b) also provides that if a governmental body is unclear as to the types of information requested, it may ask the requestor to clarify the request.

Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). A governmental body may show that release of information would interfere with law enforcement by affirmatively stating to this office that the information at issue pertains to an ongoing criminal investigation or pending criminal case.

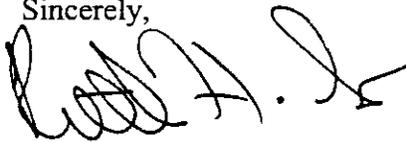
A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal investigation that has come to some type of final result other than a conviction or deferred adjudication. A governmental body may show the applicability of section 552.108(a)(2) by affirmatively stating to this office that the criminal investigation or prosecution has concluded, but that the conclusion was a result other than conviction or deferred adjudication.

A governmental body asserting the applicability of section 552.108(a)(3) must demonstrate either that the records at issue were prepared by the prosecutor in anticipation of or in the course of preparing for criminal litigation, or that the records at issue actually reflect the mental impressions or legal reasoning of the prosecutor.

You assert that these are law enforcement or prosecutorial records for use by the prosecutor or other official and that they deal with the detection, investigation or prosecution of crime. However, you have not demonstrated that section 552.108(a) is applicable to the affidavits at issue. Thus, they must be released.

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,

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# 127186

Encl. Submitted documents

cc: Mr. Alvin Pennie  
834 Pangburn Street  
Grand Prairie, Texas 75051  
(w/o enclosures)