



May 4, 2000

Ms. Jeanine Cadena
Bickerstaff, Heath, Smiley, Pollan,
Kever & McDaniel, L.L.P
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR2000-1739

Dear Ms. Cadena:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134766.

The Town of Flower Mound (the “town”), which you represent, received a request for copies of all police records and narratives pertaining to the arrest of a named 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.

Before we consider whether the submitted documents are excepted from public disclosure under section 552.108, we note that the documents contain information that falls within the purview of section 552.022(a)(17) of the Government Code. Section 552.022(a) (17) states that information that is also contained in a public court record is not excepted from public disclosure unless it is expressly made confidential under other law. We have marked the information we find appears to have been filed with a court. If these documents have in fact been filed with the court, then the information contained within the documents is public and may not be withheld.

Next, we address your assertion that section 552.108(a)(1) excepts the requested information from public disclosure because the documents relate to an investigation subject to prosecution. Section 552.108(a)(1) of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You assert that the requested file is in the hands of the town’s

prosecutor and the release of the file would interfere with the prosecution of the matter at issue. You state the prosecution of this crime will take place in Municipal Court on a certain date. Based on your arguments and our review of the submitted documents, we conclude that the release of the requested information, while prosecution is pending, would interfere with the prosecution of a crime. Therefore, pursuant to section 552.108(a)(1) of the Government Code, the town may withhold the requested information from public disclosure.

We note, however, that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is 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 offense report. *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). However, you contend that although, under *Houston Chronicle*, the names of arresting and investigating officers are generally considered part of “basic information,” in this instance, you want to withhold the name and badge number of the investigator as the officer is an undercover officer. You assert that releasing the undercover officer’s name and badge number would clearly destroy the officer’s usefulness to work in that capacity. This office, in Open Records Decision No. 127 (1976), categorized the types of information in police records that will be made public, that includes the names of the arresting and investigating officers under the statutory predecessor to section 552.108. Therefore, the city must release the names of the arresting and investigating officers. However, the city does not have to release the badge numbers of those officers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

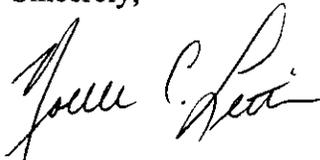
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 134766

Encl. Submitted documents

cc: Ms. Annette Reynolds
Dallas Morning News
Denton County Bureau
100 West Oak Street, Suite 318
Denton, Texas 76201
(w/o enclosures)