



May 12, 2000

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2000-1882

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135867.

The City of Dallas (the "city") received a request for all federal subpoenas issued to Dallas Police Department supervisors in the past three months. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Based upon your arguments in your brief to this office, it is our understanding that you are asserting the applicability of section 552.108(a)(1) in regard to the law enforcement interests of the U.S. Attorney's Office in investigating possible criminal conduct. You state that the requested information relates to pending federal criminal investigations. You inform us that in a letter to one of the subpoenaed individuals, the U.S. Attorney's Office requested that the subpoenaed individual "not disclose the existence of the subpoena, nor its contents, as disclosure at this time could impair the investigation being conducted and thereby may interfere with the enforcement of federal criminal law." You further inform us that the U.S. Attorney's Office has requested that the information in the other subpoenas be likewise withheld. Accordingly, we find that release of the requested information 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); see also Open Records Decision Nos. 586 (1991) (the predecessor statute to section 552.108(a) protected information held by a governmental body that was the subject of an ongoing criminal investigation by state and federal authorities), 340 (1982) (the predecessor statute to section 552.108 protected from disclosure information held by city while federal investigation was ongoing). Therefore, the city may withhold the requested information under section 552.108(a)(1).¹

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).

¹Because we find that you may withhold the requested information based on section 552.108, we do not address your other argument against disclosure at this time.

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,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 135867

Encl. Submitted documents

cc: Mr. Ken Kalthoff
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(w/o enclosures)