



August 8, 2000

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin
P.O. Box 1210
McKinney, Texas 75070-1210

OR2000-2994

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138039.

The City of Frisco (the "city"), which you represent, received a request for the call sheets made by a named individual to the city's police department, the police report concerning a shooting incident, all available portions of the city police department's investigation of that particular incident, and the restraining order, the peace bond, or protective order the named individual placed on a named police department employee. You state that the city has released the requested incident report. You claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative samples of the requested call sheets, submitted as Exhibit B, and the investigative file regarding the particular incident at issue, submitted as Exhibit C.¹

Initially, we note that the city has informed the requestor that the city has no documents responsive to the request for a copy of the restraining order, peace bond, or protective order placed against the named police department employee by the named individual. The Public Information Act (the "Act") does not require a governmental body to prepare new information in response to open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision 561 (1990). The Act only applies to information already in existence. In this instance it appears the city does not

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

have the requested information. Therefore, the city need not create any new documents to respond to the open records request for the copy of the restraining order, peace bond, or protective order placed against the named police department employee by the named individual.

Section 552.108(a)(1) 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 inform us that the requested information pertains to a pending investigation by the Collin County Grand Jury. You have provided this office the chief of police's affidavit attesting to the fact that an investigation of the incident is pending before the grand jury. Therefore, we conclude that the release of the information "would interfere with the detection, investigation, or prosecution of crime." Consequently, the city may withhold Exhibits B and C from public disclosure pursuant to section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, you must release the type of information that is considered to be front page offense report information, even if that information is not actually on the front page of the offense report that is contained in Exhibit B and C. Gov't Code § 552.108(c); *see* Open Records Decision No.127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Next, we find that Exhibit C contains 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. *See* Open Records Decision No. 525 (1989). Section 11 provides 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 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.

Code Crim. Proc. art. 49.25, § 11(emphasis added). The city must release the autopsy report to the requestor.

We also find that Exhibit C contains a custodial death report. This office has concluded that Part I of a custodial death report is public information in accordance with article 49.18(b) of the Code of Criminal Procedure. *See* Open Records Decision No. 521 (1989). Parts II through V, including attachments, are deemed privileged under article 49.18(b) and must be withheld from the public. *Id.* at 5. Accordingly, the city must withhold all portions of Parts II through V, including attachments, of the custodial death report. The city must release only Part I of the custodial death report.

In summary, the city must release the autopsy report in Exhibit C pursuant to Section 11 of article 49.25 of the Code of Criminal Procedure. The city also must release the custodial death report contained in Exhibit C in accordance with article 49.18(b) of the Code of Criminal Procedure. Finally, the city may withhold Exhibit B and the remainder of Exhibit C under section 552.108(a)(1). However, the city must release basic information contained in each exhibit under section 552.108(c).

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).

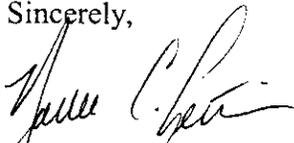
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Ref: ID# 138039

Encl. Submitted documents

cc: Ms. Jennifer Briggs Kaski
DFW Community Newspapers
837 Collins Boulevard
Cedar Hill, Texas 75104-7306
(w/o enclosures)