



August 18, 2000

Mr. David M. Berman
Nichols, Jackson, Dillard, Hager & Smith
Attorneys & Counselors at Law
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2000-3172

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID#138156.

The City of Lake Dallas (the "city"), which you represent, received a request for "the mug shot and police report" of an arrested individual. You assert that some responsive information is protected under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

In pertinent part, section 552.108 of the Government Code provides:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- ...
- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. 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); Open Records Decision No. 216 (1978). You relate that charges have been filed in the subject investigation and that this case is currently active and pending. We conclude that submitted information may be withheld under section 552.108(a)(1).

Note that "basic information" is not excepted by this section. Gov't Code 552.108(c). We believe such basic information refers to the "front page" information held to be public in *Houston Chronicle*. See Open Records Decision No. 216 (1978). In Open Records Decision No. 127 (1976) this office summarized the types of information considered to be basic information. This information includes a detailed description of the offense, time and location of the crime, identity of persons arrested, identity of the complainant and identity of the investigating officers. You indicate that you have released page 3 as basic information. We find that page 5 also contains certain basic information that must be released.

You have submitted page 19 and pages 21 through 23 for our review. You assert that these materials are not responsive to the request. The information request language is "mug shot and police report on [named individual]". After our review of the documents and the written request, we conclude that these pages are responsive to the request. Further, these materials contain an affidavit for an arrest warrant, which is information that is also contained in a public court record. Information that is also contained in a public court record is public information and is not excepted from required disclosure unless it is expressly made confidential under other law. Gov't Code 552.022(a)(17). As you have not provided comment supporting the application of any exception to disclosure that you contend applies to this information, we conclude that you have not demonstrated that the information submitted on page 19 and on pages 21 through 23 is excepted from disclosure. Therefore these pages must be released.

We conclude that the information on page 19 and pages 21 through 23, as well as basic information about a crime or arrest, including the basic information on page 5, must be released. The city may withhold the balance of the responsive information from disclosure.

Since the above discussion resolves this request, we do not address your other arguments. 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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138156

Encl: Submitted documents

CC: Ms. Roxanne Collins
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Denton, Texas 76208
(w/o enclosures)