



October 17, 2000

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Rm. 206
Dallas, Texas 75201

OR2000-4030

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140231.

The City of Dallas (the "city") received a request for documents pertaining to a criminal complaint that the requestor filed with the police. It appears that the city has released some of the requested documents. However, you claim that the submitted investigative notes are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 excepts from required public disclosure:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or
 - (3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977).

Your arguments regarding the application of section 552.108 in this case are unclear. You state that the submitted notes pertain to an incident report which involves an incident that occurred on September 20, 1998, and that “[a]t the present time,” a criminal trespass warning has been issued “involving the offense location and the subjects involved in this case.” Without indicating the status of either of these related criminal matters, you argue that the submitted notes pertain to an investigation that did not result in conviction or deferred adjudication. However, you also note that “the Attorney General’s Office has consistently

held that information pertaining to pending criminal investigations can be withheld under Section 552.108.” It is therefore not clear from your statements or from the submitted documents whether the criminal matters to which the submitted information relates have concluded or whether they remain ongoing. See Gov’t Code §§ 552.108(a)(1), (b)(1) (applying only to information that if released would interfere with an *ongoing* criminal case); Gov’t Code §§ 552.108(a)(2), (b)(2) (applying only to information pertaining to *concluded* cases that did not result in conviction or deferred adjudication). Moreover, you do not state that the submitted notes were prepared by or at the direction of an attorney representing the state. See Gov’t Code § 552.108(b)(3). Finally, although you state that you “believe that it is in the best interest of those involved in this case if the investigative notes are not released,” neither you nor the documents themselves provide any explanation or support of this statement. Because you have failed to adequately explain how or why section 552.108 applies to the submitted information, we find that the city may not withhold the information under section 552.108. Accordingly, the city must release the submitted information in its entirety to the requestor.

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).

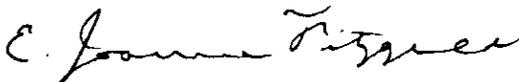
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 140231

Encl: Submitted documents

cc: Ms. Mary Ann Fontes
8901 Vantage Pt. #1506
Dallas, Texas 75243
(w/o enclosures)