



March 2, 2001

Mr. Charles M. Allen, II  
City of Richardson  
P.O. Box 830309  
Richardson, Texas 75083-0309

OR2001-0815

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144639.

The City of Richardson (the "city") received a written request for all records pertaining to assault of a named individual. You state that the city has released the "front sheet information from the Offense/Incident Report . . . along with a redacted copy of the front sheet information of the Arrest 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).

You contend that the remaining requested information is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. However, based on your representation that the information at issue relates to a pending criminal prosecution, we conclude that in this instance you have met your burden of demonstrating the applicability of

section 552.108(a)(1). The city therefore may withhold most of the information at issue pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

We note, however, that some of the information at issue is specifically made public under section 552.022 of the Government Code. Section 552.022(a) states in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

One such category of expressly public information under section 552.022(a) is “information that is also contained in a public court record.” Gov’t Code § 552.022(a)(17). Among the documents at issue are an arraignment document, an arrest warrant, and the arrest warrant affidavit. These types of documents are typically on file with the court having jurisdiction over the criminal prosecution. Section 552.108 is a discretionary exception and not “other law” for purposes of section 552.022(a).<sup>2</sup> Moreover, we know of no other law that would make these three documents confidential. Accordingly, to the extent that these documents have been filed with the court, they must be released in accordance with section 552.022(a)(17) of the Government Code.

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

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<sup>1</sup>Because we resolve your request under section 552.108(a)(1), we do not address the applicability of the other exceptions you raised except to note that the arrestee’s driver’s license number and social security number do not constitute “basic information” that is required to be released under section 552.108(c). *See* Open Records Decision No. 127 at 4 (1976).

<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer’s privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute “other law” that makes information confidential.

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).

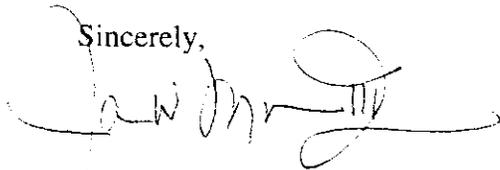
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/RWP/seg

Ref: ID# 144639

Encl. Submitted documents & videotape

cc: Ms. Lynn Guion  
Cooper & Scully  
900 Jackson Street, Suite 100  
Dallas, Texas 75202  
(w/o enclosures)