



May 18, 2001

Mr. Wiley B. McAfee  
Police Legal Advisor  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2001-2060

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147429.

The Irving Police Department (the "department") received a request for the police incident report, a copy of any 911 phone calls, and any two-way radio or telephone communications relating to the capital murder of Irving police officer Aubrey Hawkins. You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code, as well as under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

It appears, and you assert, that the requested information is the same as that addressed in Open Records Letter No. 01-1020 (2001). In the earlier decision, we concluded that the information is excepted from public disclosure under section 552.108(a)(1) because the investigation of the case was ongoing. Section 552.108 of the Government Code 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). As you inform us that the department asserts the same exceptions to disclosure as originally asserted in the previous ruling, and based on our understanding that the pertinent circumstances on which the prior ruling was based have not changed, we conclude that you may withhold the requested information in accordance with Open Records Letter No. 01-1020 (2001). *See* Open Records Decision No. 673 at 6 (2001)

(describing four required criteria for previous determination where this office has previously issued decision evaluating public availability of precise information or records requested from governmental body).

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 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 cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 147429

Encl. Submitted documents

cc: Mr. John Stanley  
2401 Turtle Creek Boulevard  
Dallas, Texas 75219  
(w/o enclosures)