



August 28, 2001

Mr. John Steiner  
Division Chief  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2001-3802

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150728.

The City of Austin (the "city") received a request for fifty-three categories of information regarding the Austin Police Department and a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted to this office by the requestor. Gov't Code §552.304.

You inform us that the city has no information which is responsive to categories 11 - 14, 41, 49, 50, and 52 of the request,<sup>2</sup> and further inform us that the city will release information which is responsive to categories 42 - 46 of the request. You state that the portion of the

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<sup>1</sup>We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The Public Information Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988).

information that is responsive to items 1 - 10 was previously the subject of a ruling from this office in Open Records Letter No. 2001-1034 (2001), and information responsive to items 25-32 was the subject of two rulings, Open Records Letter Nos. 2001-1034 (2001) and 2000-2968 (2000). The determinations in the prior rulings were based on the District Attorney's claimed interest in the requested information. To the extent that the elements of law, fact, and circumstances have not changed from those existing when the prior rulings issued, the city may rely on the previous ruling(s) regarding that same information. Open Records Decision No. 673 (2001). If any nonconfidential information which was the subject of the prior ruling(s) has subsequently been made available to the public, the city must release that information to all members of the public who request it. Gov't Code §552.007(b); *see also* Open Records Decision No. 463 at 1-2 (1987).

We note that the submitted information includes court documents. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

You argue that section 552.108 of the Government Code will except the remaining submitted information from disclosure. Section 552.108, the "law enforcement exception," provides in relevant part that "[i]nformation 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).

A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In this instance, you inform this office that the information in question pertains to pending criminal cases. You enclose a letter from the Office of the District Attorney for Travis County, which states that the district attorney "has several criminal cases currently pending that are related to much of the information that has been requested . . ." The letter states that "[i]n each of [two specified homicide] cases, the subject matter of the litigation bears directly upon much of the information requested . . ." The district attorney "request[s] that no documents be released because of the pending cases." Based on your representations, the district attorney's letter, and our review of the submitted information, we find that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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. 372 at 4 (1983) (stating that where an incident allegedly involving criminal conduct remains under active investigation

or prosecution, section 552.108 may be invoked by any proper custodian of related information). Therefore, the city may withhold the remaining information under section 552.108(a)(1). We note that the city has the discretion to release information that is protected by section 552.108, unless the information is made confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977).<sup>3</sup>

To summarize: The court records contained in Items 25 - 40, and 47, to the extent that they have been filed with a court, are expressly public pursuant to section 552.022(a). The remaining information is excepted from disclosure under section 552.108, and may be withheld.

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

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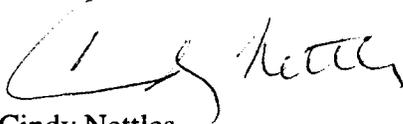
<sup>3</sup>Because section 552.108 is dispositive, we need not address the applicability of your other claimed exceptions.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 150728

Enc. Submitted documents

c: Mr. Jeffery Mundy  
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(w/o enclosures)