



September 4, 2001

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2001-3917

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151457.

The City of Arlington Police Department (the "department") received a request to inspect all information held by the department and dated from January 1, 2000 up to the date that the request for information is fulfilled pertaining to a specified corporation, including all photographs, videotapes, audiotapes, and computer-generated records. You state that the department will release the majority of the requested information, including "media copies" of the incident reports submitted to us as Exhibit B. *See Gov't Code § 552.108(c)* (providing that basic information about arrested person, arrest, or crime is not excepted under section 552.108); *see also 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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You contend, however, that the submitted information in Exhibits B and C is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception that you claim and have reviewed the submitted information.

We note at the outset that the request for information partially appears to be a standing request for all information that comes into the department's possession from the time the department received the request up until the time that the department fulfills the request. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies

only to information already in existence at the time that the governmental body receives the request for information. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 465 at 1 (1987), 476 at 1 (1987). Therefore, to the extent that this request for information constitutes a request for all information that comes into the department's possession from the time the department received the request up until the time that the department fulfills the request, the Act does not require the board to respond.

Next, we note that the submitted information in Exhibit B contains one incident report that is protected from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹ Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). The incident report at issue in Exhibit B, which we have marked, concerns juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, we conclude that the marked incident

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

report is confidential and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We next address your section 552.108 claim regarding the remaining submitted information in Exhibits B and C. Section 552.108(a) of the Government Code provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Section 552.108(b) of the Government Code provides in pertinent part that 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 is excepted from disclosure if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must particularly demonstrate, if the information does not supply the explanation on its face, how and why the release of the particular requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the remaining incident reports in Exhibit B are either open cases or pending investigations. Therefore, we conclude that the release of the remaining incident reports in Exhibit B "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, you may withhold the remaining incident reports in Exhibit B pursuant to section 552.108(a)(1) of the Government Code.

You also state that the release of the three departmental memoranda in Exhibit C would reveal "confidential identity information and details concerning the execution of covert operations" regarding particular undercover stings at a specified address. This office has stated that procedural information related to law enforcement may, under some circumstances, be withheld under section 552.108 or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 341 (1982) (Department of Public Safety drivers' licenses forgery detection procedures), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). Based on our review of your arguments and the submitted memoranda in Exhibit C, we conclude that you have particularly explained how the release of the three memoranda would interfere with law enforcement. Accordingly, you may also withhold the three departmental memoranda in Exhibit C from disclosure pursuant to section 552.108 of the Government Code.

In summary, you must withhold the marked incident report in Exhibit B from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. You may withhold the remaining incident reports in Exhibit B from

disclosure pursuant to section 552.108 of the Government Code. You may withhold the three submitted departmental memoranda in Exhibit C from disclosure pursuant to section 552.108 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 151457

Enc. Marked documents

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