OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 17, 2001

Mr. David L. Finney
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2001-4137

Dear Mr. Finney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152060.

The Criminal District Attorney of Denton County (the "District Attorney") received a request for "any non-privileged documents" contained within the District Attorney's files concerning case number F99-0516-B, *State of Texas v. Elaine Waton Morris*. You state that you have provided the requestor with a portion of the information responsive to the request, but claim that the remaining requested information is excepted from disclosure under sections 411.083(b)(1), 411.089(a), 411.089(b)(1), and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.[1]

Section 552.108, the "law enforcement exception," provides in pertinent part:

> (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (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 . . . .

[1]We note that you inform us that you have released to the requestor the information in submitted Exhibit C. Therefore, this ruling does not address the applicability of the Public Information Act to the released information.

> (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.[2] You inform us that "[t]he charges against Ms.Morris were dismissed on the State's motion to dismiss for insufficient evidence on April 17, 2001." On this basis, we find that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable, and that the information you have submitted as Exhibits D and D-1 may be withheld from disclosure under this subsection. As we resolve your request under section 552.108, we need not address your other arguments against disclosure.

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,

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[2]Although you assert section 552.108(c) of the Government Code, we understand from your argument that you seek to withhold the information under section 552.108(a)(2).

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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref.: ID# 152060

Enc.: Submitted documents

c: Mr. William Trantham
1710 West University, Suite A
Denton, Texas 76201
(w/o enclosures)