



October 5, 2001

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

OR2001-4477

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# 152867.

The Irving Police Department (the "department") received a request for the following information:

1. All department radio dispatch tapes beginning one hour before and ending two hours after the shooting of officer Aubrey Hawkins.
2. All 911 tapes for the same time period.
3. All department radio logs for the same time period.
4. All tapes of radio transmissions to or from Irving police officers and dispatchers for the same period of time.
5. All department mobile data terminal records of communications between police units for the same time period.

You state that there has been a previous determination from this office that a portion of the requested information is excepted from disclosure. *See* Open Records Letter Nos. 2001-1020 (2001), 2001-2060 (2001). Therefore, assuming that the pertinent circumstances on which the prior rulings were based have not changed, you may withhold that portion of the requested information previously ruled upon in accordance with Open Records Letter Nos. 2001-1020 (2001) and 2001-2060 (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).

You claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). In this regard, we note your statement that the Daily Summary Report, submitted as Exhibit F, “is the closest document the [department] has to the radio logs requested” We therefore believe that the Daily Summary Report is analogous to the “radio logs” that this office determined to be subject to disclosure as “front page information” under *Houston Chronicle Publishing Company 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). *See* Open Records Decision No. 394 (1983). Accordingly, we conclude that the city may withhold the requested information at this time under section 552.108(a)(1), with the exception of the Daily Summary Report submitted as Exhibit F.² We further note that any information the city has voluntarily released to the public may not be withheld from the requestor. *See* Gov’t Code

¹We assume that the “representative samples” of records submitted to this office are 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.

²We note that generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983). We further note that while you raised section 552.101 of the Government Code, which excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” you cited no law, nor are we aware of any, that would make the Daily Summary Report confidential.

§ 552.007 (prohibiting governmental body from selectively disclosing information that is not confidential by law but that a governmental body may withhold under a discretionary exception to public disclosure).

To summarize, the department may withhold the requested information pursuant to section 552.108(a)(1), with the exception of the information contained in Exhibit F, which must be released pursuant to section 552.108(c).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref.: ID# 152867

Enc.: Submitted documents

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