



May 6, 2002

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR2002-2380

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162511.

The Dallas Police Department (the “department”) received a request for:

- 1) A summary accounting, already provided to other media in response to Public Information Act requests, of money paid to confidential informants in [department] drug cases, over the last several years.
- 2) Copies of all documents or official communications of the [department] provided to other news media or attorneys who have made demands or requests for information under the Public Information Act or the Freedom of Information Act in the last six months dealing with the so-called “Sheetrock” or fake drugs cases now under investigation by the FBI.
- 3) Copies of all Public Information Act or Freedom of Information Act requests for information about the Sheetrock cases received by the [department] in the last six months.
- 4) Copies of all letters or memos of response to those requests, including letters from the city attorney.

You claim that some of the requested information is excepted from disclosure because such information “raise[s] privacy interests and should be protected from public disclosure for safety reasons.” We have considered your arguments and reviewed the submitted

representative sample of information.¹ We have also considered the comments submitted by the Federal Bureau of Investigation (the "FBI"). See Gov't Code § 552.304 (providing for submission of public comments).

Initially, we note that you have not submitted for our review information responsive to the first three categories of the request, which seek information previously released to the public and public information requests received by the department. See Gov't Code § 552.007. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to the first three categories of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

We will now address your arguments with respect to the submitted information. The Dallas Division of the FBI has submitted a letter to this office contending that it has a law enforcement interest in the information at issue and that the information should be withheld under section 552.108. Therefore, we will address the FBI's argument under section 552.108. See Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

Section 552.108, the "law enforcement exception," excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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 section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. 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). The FBI contends that the requested information relates to an ongoing public corruption investigation by the FBI and that disclosure of the information would therefore interfere with its investigative efforts. Based on these representations and our review of the information in question, we find that the release of that information would interfere with the investigation efforts of the FBI. See Gov't Code § 552.108(a)(1); *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); ORD 586 at 3 (addressing statutory

¹We 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.

predecessor to section 552.108). Consequently, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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).

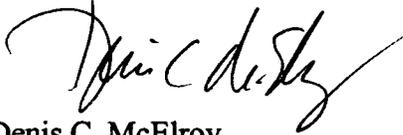
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement Commission at 512/475-2497.

²As we are able to make this determination, we need not address the department's arguments against disclosure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/KAE/sdk

Ref: ID# 162511

Enc: Submitted documents

c: Mr. Jim Schutze
6045 Bryan Parkway
Dallas, Texas 75205
(w/o enclosures)