



November 8, 2002

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
7DN, City Hall
1500 Marilla
Dallas, Texas 75201

OR2002-6373

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171935.

The Dallas Police Department (the “department”) received two requests for copies of information pertaining to a specified person. You state that the department will release some responsive information to the requestors. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.¹

Initially, we note that Exhibit C is subject to section 552.022 of the Government Code. Section 552.022 makes certain information public, unless it is expressly confidential under other law. *See* Gov’t Code § 552.022(a). One category of public information under section 552.022 is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]” Gov’t Code § 552.022(a)(1). Exhibit C constitutes a completed investigation under section 552.022(a)(1) which, thus, must be released to the requestor unless it is confidential under other law or is excepted from disclosure under section 552.108 of the Government Code. Although the department claims that portions of this information are excepted from disclosure under

¹ 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.

section 552.111 of the Government Code, we note that this exception to disclosure is a discretionary exception under the Public Information Act and, as such, does not constitute "other law" that makes information confidential.² Accordingly, we conclude that the department may not withhold any portion of Exhibit C under section 552.111 of the Government Code. However, since the department also claims that this exhibit, as well as Exhibit B, are excepted from disclosure pursuant to section 552.108, we will address that claim with regard to these exhibits.

Section 552.108(a) 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). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, 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 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 Exhibit B pertains to an ongoing criminal investigation being conducted by the department and the city's marshall's office. You also state that, although the investigation pertaining to Exhibit C is completed, it concerns the same general allegations of misconduct that are documented by Exhibit B and that the release of both exhibits would interfere with the investigation and prosecution of these matters. Based on our review of your arguments and both exhibits, we agree and, thus, conclude that the release of Exhibits B and C "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, we conclude that the department may withhold Exhibits B and C pursuant to section 552.108(a)(1) of the Government Code.³

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

³ Because we base our ruling on section 552.108, we need not consider the department's remaining claims as to both exhibits regarding sections 552.101 and 552.111 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

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complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement 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. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171935

Enc. Submitted documents

cc: Mr. Kenny Kirby
4545 Fuller, Suite 200
Irving, Texas 75038
(w/o enclosures)

Ms. Mary Morris
1328 Royal Oak Drive
DeSoto, Texas 75115
(w/o enclosures)