



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 1, 2003

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-2935

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180272.

The Town of Flower Mound (the "town"), which you represent, received two requests from the same requestor for a variety of information pertaining to seven specified incident reports. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the town previously requested a decision from us regarding the information associated with incident number 03-000062. We ruled on that information in Open Records Letter No. 2003-0914 (2003) and concluded that, except for basic information that must be released to the requestor, the town may withhold the information associated with incident number 03-000062 pursuant to section 552.108(a)(1) of the Government Code. You inform us that the circumstances on which that ruling was based have not changed since the issuance of the ruling. Accordingly, we conclude that the town may rely on Open Records Letter No. 2003-0914 (2003) as a previous determination regarding the public availability of the information associated with incident number 03-000062. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (regarding previous determinations).

You claim that the remaining requested information is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that the remaining requested information pertains to cases that were closed without criminal charges being filed against anyone. Thus, we understand from your representation that the

remaining requested information relates to cases that have concluded in final results other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to this information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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. 127 (1976) (summarizing types of basic information that must be made available to public, including detailed description of offense). Accordingly, with the exception of basic information that is contained throughout the remaining requested information, we conclude that the town may withhold this information pursuant to section 552.108(a)(2) of the Government Code. Because we base our ruling on section 552.108 of the Government Code, we need not address your remaining claimed exception to disclosure.

In summary, the town may rely on Open Records Letter No. 2003-0914 (2003) as a previous determination regarding the public availability of the information associated with incident number 03-000062. With the exception of basic information that is contained throughout the remaining requested information, the town may withhold this information pursuant to section 552.108(a)(2) 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 Dep't of Pub. 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.

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# 180272

Enc. Submitted documents

c: Ms. Stephanie Miller
1825 Brook Lane
Flower Mound, Texas 75028
(w/o enclosures)