OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2003-4343

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183201.

The Arlington Police Department (the "department") received a request for three categories of information pertaining to the arrest of the requestor's client. You state that some responsive information does not exist.[1] You indicate that the "full narrative material" contained within the submitted incident report, which we assume for purposes of this ruling is responsive to this request, may be excepted from disclosure pursuant to section 552.108 of the Government Code.[2] We have considered the exception you indicate may apply and have reviewed the submitted information.

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[1] We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. –San Antonio 1978, writ dism'd). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

[2] We note that you do not claim that any other portion of the submitted information is excepted from disclosure.

You indicate that the "full narrative material" contained within the submitted incident report may be excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 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(a)(1) 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 the submitted information pertains to a case in which charges are pending final disposition in the Tarrant County criminal courts system. Based on our review of your representation and the submitted information, we find that the release of most portions of the "full narrative material" would "interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we find that section 552.108(a)(1) is applicable to the "full narrative material."

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). Accordingly, with the exception of basic information that must be released to the requestor from throughout the "full narrative material," we conclude that the department may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the department maintains the discretion to release all or part of that information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked within the remaining submitted information pursuant to section 552.130 of the Government Code.

In summary, with the exception of basic information that must be released to the requestor from throughout the "full narrative material," the department may withhold the information that we have marked pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the Texas motor vehicle information that we have marked within

the remaining submitted information pursuant to section 552.130 of the Government Code. The department must release the rest of the submitted information to the requestor.

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).

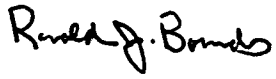
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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/sdk

Ref: ID# 183201

Enc. Marked documents

cc: Mr. John G. Johnson
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(w/o enclosures)