



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1994

Mr. Glen Gilmore
City Manager
City of Richmond
402 Morton Street
Richmond, Texas 77469

OR94-132

Dear Mr. Gilmore:

The City of Richmond (the "city") has received a request for certain audiotapes. You have submitted the requested audiotapes to us for review and ask whether they are subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 23241.

You ask whether section 552.108 (formerly section 3(a)(8), V.T.C.S. article 6252-17a) and section 552.109 (formerly section 3(a)(9), V.T.C.S. article 6252-17a) except the requested audiotapes from required public disclosure. Section 552.108 of the act, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

This section applies only to records that can be characterized as the records of law enforcement agencies or prosecutors. As a general rule, evidentiary information related to a pending criminal case may be withheld under this exception. Once a case is closed,

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

however, evidentiary information may be withheld only if its release "will unduly interfere with law enforcement and crime prevention." See Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 366 (1983) at 3; 216 (1978) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). You do not indicate that the requested information relates to a pending criminal investigation or prosecution, nor have you demonstrated that its release "will unduly interfere with law enforcement and crime prevention." Accordingly, you may not withhold the requested information under section 552.108 of the act.

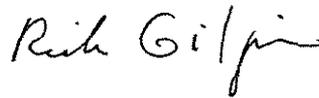
Section 552.109 of the act excepts from required public disclosure

[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy.

The submitted audiotapes do not constitute "[p]rivate correspondence or communications of an elected office holder" and thus may not be withheld from required public disclosure under section 552.109 of the act. Accordingly, the city must release the requested audiotapes in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Open Government Section

RG/GCK/rho

Enclosure: Submitted audiotape

Ref: ID# 23241
ID# 23777