



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 18, 1998

Ms. Cathy Cunningham  
Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR98-0746

Dear Ms. Cunningham:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113926.

The City of Irving (the "city") received a request for the supporting affidavit for an arrest warrant. You assert that the affidavit is protected from disclosure pursuant to section 552.108 of the Government Code. In considering your section 552.108 argument, we will assume that the affidavit at issue was not filed with a court, since documents filed with a court are generally considered to be public and must be released. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); *see also* Open Records Decision No. 287 (1981).

Section 552.108 provides that:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You assert that release of the affidavit would hamper an ongoing murder investigation. Since there is an ongoing criminal investigation, we agree you have shown that release of the affidavit would interfere with the investigation or prosecution of crime. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> 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); *see* Open Records Decision No. 216 (1978) at 3 (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). Thus, the affidavit may be withheld from disclosure pursuant to section 552.108(a)(1).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 113926

Enclosures: Submitted documents

cc: Mr. Dave Michaels  
*The Dallas Morning News*  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)