



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1998

Mr. L. Stanton Lowry
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR98-0834

Dear Mr. Lowry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114024.

The City of Farmers Branch (the "city"), which you represent, received a request for a copy of the arrest affidavit and any search warrants used by the Farmers Branch police in connection with the arrest of Nancy Durbin. You assert that the information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Initially, we note that if the submitted arrest and search warrant affidavits or the warrants themselves have been filed with a court, they are a part of the public record and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (orig. proceeding) (if documents are part of public record they cannot be withheld under section 552.108). Furthermore, the search warrant affidavit is made public by statute if it has been *executed*. *See* Code Crim. Proc. art. 18.01(b). Therefore, the city may not withhold an executed search warrant affidavit from required public disclosure under sections 552.103 or 552.108 of the Government Code. If, however, neither the arrest warrant affidavit, the search warrant affidavit nor the warrants themselves have been filed with a court, or if the search warrant affidavit has not been executed, we will consider whether this information is protected from disclosure by section 552.108 of the Government Code.

Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 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 [public disclosure] 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 inform us that the suspect in this case, Nancy Durbin, is currently being held for the charge of murder, and that the requested information directly relates to a pending judicial proceeding, the criminal prosecution of Ms. Durbin. Therefore, unless the affidavits or warrants have been filed with a court, or unless the search warrant affidavit has been executed, we find that release of the affidavits and warrants would interfere with the prosecution of crime, and therefore, they may be withheld from disclosure pursuant to section 552.108(a)(1). As we resolve your request under section 552.108, we need not address your argument under section 552.103.

We are resolving this matter with an 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 should 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 114024

Enclosures: Submitted documents

cc: Kendall Anderson
P.O. Box 665297
Dallas, Texas 75265
(w/o enclosures)