



September 22, 1999

Mr. Mark A. Flowers
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-2641

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128154.

The City of Midland (the "city") received two written requests for police records pertaining to a particular DWI arrest. You state that the city has released to both requestors the "basic information" contained in the requested offense report. You seek to withhold the remaining information at issue pursuant to section 552.108(a)(1) of the Government Code.

You inform this office that the arrested individual has been placed in a "pre-trial diversion" plan. You explain that a pre-trial diversion

is an agreement between the District Attorney and a potential defendant whereby the potential defendant agrees to comply with a set of terms and conditions, similar to those imposed as part of deferred adjudications or probations, and the District Attorney agrees to pause prosecution of the case for a period of twelve months. At the conclusion of twelve months, if the potential defendant has complied with the terms and conditions of the pre-trial diversion, the District Attorney does not file the charges and no adjudication occurs. If the potential defendant has not complied with the terms and conditions of the pre-trial diversion, then the District Attorney files and prosecutes the case. Basically, the prosecution and investigation remain pending until the terms and conditions of the pre-trial diversion are complied with, or the case is ultimately adjudicated.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Based upon your description of the pre-trial diversion plan, we

conclude that you have demonstrated that the records at issue pertain to a pending criminal investigation of the DWI and that section 552.108(a)(1) is applicable in this instance. The city, therefore, may withhold the information at issue pursuant to section 552.108(a)(1).¹

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.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/nc

Ref.: ID# 128154

Encl. Submitted documents

cc: Mr. Greg Harman
Area Reporter
Odessa American
P.O. Box 2952
Odessa, Texas 79760
(w/o enclosures)

cc: Mr. Jeff McDaniel
Managing Editor
Fort Stockton Pioneer
P.O. Box 1528
Fort Stockton, Texas 79735
(w/o enclosures)

¹Because we resolve your request under section 552.108(a)(1), we need not address your section 552.117 claims except to note that information typically excepted from public disclosure under section 552.117 does not constitute "basic information" for purposes of section 552.108(c).