



December 6, 1999

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR99-3512

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131073.

The City of Fort Worth and the Fort Worth Police Department (the "department") received separate requests for information relating to the same specified case. One request seeks all documents, notes and tapes pertaining to the case, and the other seeks the case file. You have submitted what you describe as being a representative sample of the requested information. You claim that the requested information is excepted from public disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

We note initially that the submitted information includes autopsy reports that are made public by statute. Section 11, article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall be a part of the record. Copies of all records shall promptly be delivered to the proper district, county, or criminal district

¹We assume that the "representative sample" of information that you submitted to this office is truly representative of the requested information as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This letter neither authorizes the withholding of nor otherwise addresses any requested information that is substantially different from the submitted information.

attorney in any case where further investigation is advisable. The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76th Leg., R.S., ch. 607, § 2, 1999 Tex. Sess. Law Serv. 3147, 3148 (Vernon) (to be codified as an amendment to Code Crim. Proc. art. 49.25, § 11). Thus, all autopsy records included in the requested information (other than photographs or x-rays taken during an autopsy) are public and must be disclosed.

We also note that the submitted information includes documents filed with a court, including search warrant affidavits. With regard to search warrant affidavits, article 18.01 of the Code of Criminal Procedure provides in relevant part:

- (b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Act of May 10, 1999, 76th Leg., R.S., ch. 167, § 1, 1999 Tex. Sess. Law Serv. 637 (Vernon) (to be codified as an amendment to Code Crim. Proc. art. 18.01(b)). Thus, the department must release any affidavit that was submitted in connection with an executed search warrant, pursuant to article 18.01(b) of the Code of Criminal Procedure. The department also must release any other document that has been filed with a court. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Section 552.108(a)(2) of the Government Code provides that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . 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[.]” You state that the requested information pertains to an investigation that did not result in a conviction or a deferred

adjudication. Based on your representation, we conclude that, except as specifically addressed above, the department may withhold most of the other requested information from disclosure under section 552.108(a)(2) of the Government Code. We note, however, that section 552.108 is not applicable to the basic front page offense and arrest report information held to be public in *Houston Chronicle Publ'g Co. 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 Gov't Code § 552.108(c); Open Records Decision No. 127 (1976). We also note that the department has the discretion, under section 552.007(a) of the Government Code, to release all or part of the information that it is entitled to withhold under section 552.108, unless disclosure is otherwise expressly prohibited or the information is otherwise confidential by law.

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.

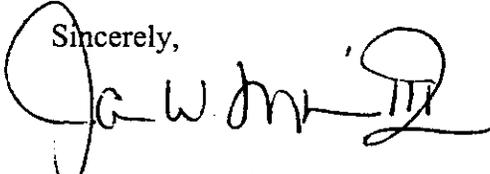
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,

A handwritten signature in black ink, appearing to read "J W Morris III". The signature is written in a cursive style with a large initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/nc

Ref: ID# 131073

Encl. Submitted documents

cc: Mr. Jason Sickles
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Ms. Kathy Sanders
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(w/o enclosures)