



June 14, 2000

Mr. Wiley B. McAfee
Police Legal Advisor
City of Irving
Police Department
P.O. Box 152288
Irving, Texas 75015-2288

OR2000-2327

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137316.

The Irving Police Department (the "department") received a request for all incident reports concerning a specified address that were reported by three specified individuals since December 1999. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that four incident reports are excepted from disclosure under section 552.108(a). A governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) excepts from disclosure information 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. After reviewing Exhibit A, we note that the offense report indicates that the case is pending and has been referred to the city attorney's office. Accordingly, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the department may withhold Exhibit A under section 552.108(a)(1).

Section 552.108(a)(2) applies to information that *did not result* in a conviction or deferred adjudication. You assert that the submitted information relates to investigations that *have not resulted* in convictions or deferred adjudications. In order to be protected under section 552.108(a)(2), the information must deal with the detection, investigation, or prosecution of crime only in relation to an investigation that ended in a final result other than conviction or deferred adjudication. Thus, the city must demonstrate that the cases ended in a final result other than conviction or deferred adjudication or the information must show a final result on its face. After reviewing the submitted information, we find that Exhibits B and D show the status as “cleared” and indicate that no crime was committed. Further, Exhibit C shows the status as “suspended,” but that no crime occurred. Based on the status of the cases as reflected in the incident reports, we agree that section 552.108(a)(2) is applicable to Exhibits B, C, and D. Therefore, you may withhold Exhibits B, C, and D under section 552.108(a)(2). You state that the department has already released basic information as required by the holding in *Houston Chronicle*. 531 S.W.2d at 177. See also Open Records Decision No. 127 (1976). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/lnc

Ref: ID# 137316

Encl. Submitted documents

cc: Mr. Norman Hogan
4014 Yellowstone Street
Irving, Texas 75062
(w/o enclosures)