



July 10, 2001

Ms. Karen H. Brophy
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2001-2955

Dear Ms. Brophy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151028.

The Town of Flower Mound (the "town"), which you represent, received a request for the police report and search warrant relating to William C. Russell. You state that you have released the first three pages of the incident report, the search warrant and the officer's return on the search warrant. You claim that the remaining information is excepted from disclosure by section 552.101 of the Government Code in conjunction with the informer's privilege and section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, the town received the request on May 31, 2001 and, therefore, had until June 14, 2001 to request a decision from this office. Because the request for a decision was postmarked on June 15, you failed to request a decision within the ten business day period under section 552.301(a). Therefore, because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't

Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; *see Open Records Decision No. 630* (1994).

You wish to withhold the search warrant affidavit under section 552.101 in conjunction with the informer's privilege. An affidavit to support a search warrant is made public by statute if it has been executed. Code Crim. Proc. art. 18.01(b). Here, the search warrant has been executed. Therefore, the town must release the search warrant affidavit.

As for the remaining information, section 552.108 is discretionary and therefore does not provide a compelling reason for overcoming the presumption of openness under section 552.302. *See Open Records Decision Nos. 630 at 4-7* (1994), *473 at 2* (1987). Because you have failed to raise a compelling reason for withholding the requested information, the information is presumed public and must be disclosed to the requestor. Gov't Code §§ 552.301(e), .302.

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).

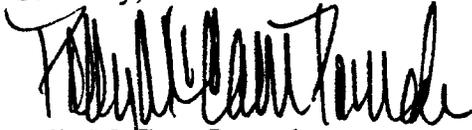
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Polly McCann Pruneda
Assistant Attorney General
Open Records Division

PMP/sdk

Ref: ID# 151028

Enc: Submitted documents

c: Mr. William C. Russell
1111 Lexington Avenue Apt. 1033
Flower Mound, Texas 75028
(w/o enclosures)