



September 12, 2001

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

OR2001-4074

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# 151887.

The Town of Flower Mound (the "town"), which you represent, received a request for animal control records for the past five years concerning a specified street address. You inform this office that the town has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that you refer in your arguments to "the affidavit supporting the search warrant." We are unable to locate such a document among the records at issue. Thus, we have no basis for a conclusion that the referenced affidavit is excepted from disclosure. *See* Gov't Code § 552.301(e)(1)(D), (e)(2) (providing that governmental body that requests decision under Gov't Code § 552.301(a) must submit copy of specific information requested, or submit representative samples if a voluminous amount of information was requested, and label submitted information to indicate which exceptions to disclosure apply). Therefore, to the extent that the affidavit exists, it must be released. *See id.* § 552.302.

Next, we address your claim under section 552.108 of the Government Code, as it is the more inclusive exception you raise. Section 552.108, the "law enforcement exception," excepts from public 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[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You indicate that the records submitted as Exhibit B are held by the town's police department. You state that these records relate to a criminal case that is pending in municipal court. Based on these representations and our review of the information at issue, we find that you have demonstrated that the release of this information would interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1); *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); Open Records Decision No. 216 at 3 (1978). We therefore conclude that the town may withhold the records submitted as Exhibit B under section 552.108(a)(1). As we are able to make this determination, we need not address your arguments under section 552.101.

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).

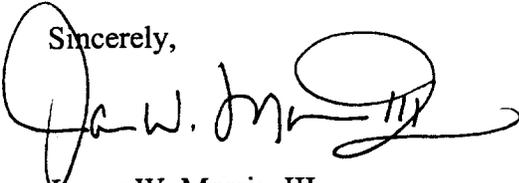
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish extending to the right.

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

JWM/sdk

Ref: ID# 151887

Enc: Submitted documents

c: Mr. Phil Vola
1729 Prescott Drive
Flower Mound, Texas 75028
(w/o enclosures)