



January 17, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2002-0286

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157486.

The Dallas County District Attorney's Office (the "district attorney") received a request for all documents and information held by the Office of Public Integrity that relate to or concern the requestor. You state that the district attorney will release all information held by the Office of Public Integrity previously sent to or received from the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code and Texas Rule of Civil Procedure 192.5. We have considered your arguments and have reviewed the information you submitted. We also received correspondence from the requestor.¹

Initially, we must determine whether the district attorney's request for this decision was timely under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request." Section 552.301 further provides as follows:

¹See Gov't Code § 552.304 (providing that any interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

(e) A governmental body that requests an attorney general decision under Subsection (a) must . . . not later than the 15th business day after the date of receiving the written request:

(1) submit to the attorney general:

(A) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(B) a copy of the written request for information;

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.

Gov't Code § 552.301(e)(1)(A)-(D). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The present request for information is dated September 12, 2001. You inform us, however, that the district attorney first received this request for information from this office on October 23, 2001. The requestor disputes your representation. Whether the district attorney first received this request on October 23, 2001 presents a fact issue. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990).

Based on your representations and the relevant documentation, we find that the district attorney first received this request for information on October 23, 2001. Thus, the district attorney had until and including November 6, 2001, in which to comply with section 552.301(b) and until and including November 13, 2001, to comply with section 552.301(e). You requested this decision and submitted the information in question to this office on November 5, 2001. Therefore, as your request for a decision was timely submitted, we will address your arguments against disclosure.

Section 552.108(a)(2) of the Government Code excepts from disclosure “information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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[.]” Section 552.108(b)(2) protects “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” A governmental body must sufficiently explain, if the information does not supply an explanation on its face, how and why section 552.108 is applicable 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).

Section 552.108(a)(2) protects information relating to a concluded case that did not result in a conviction or a deferred adjudication. You state that all of the information at issue relates to Public Integrity complaints filed by the requestor that did not result in a conviction or deferred adjudication. Based on your representation, we find that section 552.108(a)(2) is applicable to the information in question. We therefore conclude that the district attorney may withhold the remaining requested information under section 552.108 of the Government Code. As we are able to make this determination, we need not address your other arguments against disclosure.

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

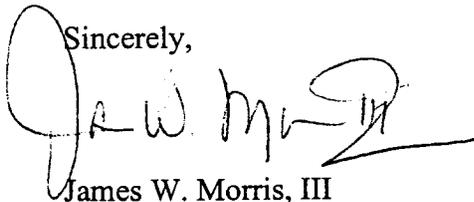
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,



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

JWM/sdk

Ref: ID# 157486

Enc: Submitted documents

c: Mr. J. Umoren
c/o Law Offices of Reginald Carpenter
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Dallas, Texas 75201
(w/o enclosures)