



March 21, 2002

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

OR2002-1418

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# 160380.

The City of Irving Police Department (the "department") received a request for copies of the following nine categories of information:

1. a record providing the name and badge number of the person who called the requestor's home on a specified day and time using a specified telephone number
2. the incident activity summary for 3902 Wind River Court in response to any calls made to the department in January 2002
3. all police reports for 3902 Wind River Court in response to any call made to the department in January 2002
4. the incident activity summary for 1124 Jeffrey Trail in response to any calls made to the department in January 2002
5. all police reports for 1124 Jeffrey Trail in response to any call made to the department in January 2002
6. the telephone call made to the department in January 2002 that resulted in a call received by the requestor from a specified telephone number

7. the telephone record for a specified telephone number for January 5, 2002
8. the incident activity summary for 1124 Jeffrey Trail that shows information for that address prior to January 2002
9. all police reports and complaints made from 1124 Jeffrey Trail.

You state that you have provided some responsive information to the requestor to include basic information that is responsive to request items 3, 6, and 9. See Gov't Code § 552.108(c) (stating that basic information regarding crime is not excepted from disclosure under Gov't Code § 552.108); see also *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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). The other information provided to the requestor was responsive to request items 2, 8, and 9. You also state that the department does not maintain documentation responsive to request items 1, 5, and 7.¹ You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the department states that a letter requesting clarification of request item 4 has been sent to the requestor. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We assume for purposes of this ruling that the department requested clarification regarding item 4 of the request within ten business days of the department's receipt of the request. Based on our review of all information that has been submitted to us, it does not appear, however, that the department has yet received the requested clarification. Thus, we conclude that the department need not respond to item 4 of the request until it receives the requestor's clarification. We note, however, that when you receive the clarification, the department must seek a ruling from this office before withholding from disclosure any of the information that may be responsive to item 4 of the request. See Open Records Decision No. 663 (1999) (providing for tolling of

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

ten business day deadline for requesting attorney general decision while governmental body awaits clarification).

Section 552.108(a)(1) of the Government Code provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if “release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Section 552.108(a)(2) provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that concluded in a final result other than conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov’t Code §§ 552.108(a), (b), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the remaining information that is responsive to request items 3 and 6 pertains to cases that are still pending. Therefore, we find that the release of this information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that the department may withhold the remaining portions of exhibits E and F from disclosure pursuant to section 552.108(a)(1) of the Government Code. *See* Gov’t Code § 552.108(a)(1); *see also 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). You also state that case number 92-071846, which is responsive to a portion of the remaining requested information in request item 9, has concluded in a final result other than conviction or deferred adjudication. Accordingly, we conclude that the department may withhold the remaining portions of exhibit H from disclosure pursuant to section 552.108(a)(2) of the Government Code.

We note that exhibit I contains Texas motor vehicle information that is subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130. Accordingly, we conclude that the department must withhold from disclosure the information in exhibit I that we have marked pursuant to section 552.130 of the Government Code.

In summary, the department may withhold the remaining portions of exhibits E and F from disclosure pursuant to section 552.108(a)(1) of the Government Code. The department may withhold the remaining portions of exhibit H from disclosure pursuant to

section 552.108(a)(2). The department must withhold from disclosure the information that we have marked in exhibit I pursuant to section 552.130 of the Government Code.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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 that reads "Ronald J. Bounds". The signature is written in a cursive, slightly slanted style.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sg

Ref: ID# 160380

Enc: Marked documents

cc: Mr. Paul Jordan
P.O. Box 154248
Irving, Texas 75015-4248
(w/o enclosures)