



April 17, 2002

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2002-1936

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161409.

The City of Dallas Police Department (the "department") received a request for (1) information concerning narcotics identification kits bought or used by the department; (2) purchase orders and invoices of the narcotics identification kits since January 1, 1999; (3) information concerning the policies and procedures for gathering and testing of narcotics evidence by the department; (4) the name of the laboratory to which the department sends seized narcotics for testing; and (5) names of employees who have been trained to use field narcotics identification kits and details concerning the training courses they attended. You state that the department will release the information responsive to items 1, 2, 4, and 5 of the request. However, you claim that the information responsive to item 3 of the request is excepted from disclosure under section 552.103 of the Government Code. We have also received arguments from the Federal Bureau of Investigation. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

We note that you have not fully complied with section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written

request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. According to the date stamp on the request, the department received the instant request for information on January 29, 2002. You state that your office was closed for President's Day on February 18, 2002. Thus, the fifteen-business-day deadline for submitting the requested information was February 20, 2002. However, the postmark on the envelope in which the documents were sent indicates that the documents were not mailed until February 21, 2002. *See Gov't Code § 552.308.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.103 is a discretionary exception and cannot provide a compelling reason for overcoming the presumption of openness. *See Open Records Decision No. 473 (1987)* (city's failure to meet 10-day deadline waived protections of sections 552.103 and 552.111). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason under section 552.302. *See Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991).* The Dallas Division of the Federal Bureau of Investigation (the "FBI") has submitted a letter to this office contending that it has a law enforcement interest in the information at issue and that the information should be withheld under section 552.108. Therefore, we will address the FBI's argument under section 552.108. *See ORD 586 at 3.*

Section 552.108, the "law enforcement exception," excepts from required public disclosure "[i]nformation 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 responsive information does not do so on its face, how and why section 552.108 is applicable. *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). The FBI contends that the requested information relates to an ongoing public corruption investigation by the FBI and that disclosure of the information would therefore interfere with its investigative efforts. Based on these representations and our review of the information in question, we find that the release of that information would interfere with the investigation efforts of the FBI. *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); ORD 586 at 3 (addressing statutory predecessor to section 552.108). Consequently, the department may withhold the submitted information under section 552.108(a)(1) 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); *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. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 161409

Enc: Submitted documents

c: Mr. Bennett Cunningham
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(w/o enclosures)