



April 18, 2002

Ms. Moira Parro
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2002-1980

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161677.

The Southwestern Institute of Forensic Science (the "institute") received a request for information pertaining to test results related to the manner in which Dallas Police Department officers administered ODV-type cocaine field narcotics test kits for a specified period of time.¹ You claim that the submitted 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 representative sample documents.² We have also considered comments submitted by an Assistant United States Attorney employed with the Northern District of Texas of the United States Department of Justice ("USDOJ"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹ You state that the institute was established by the Dallas County Commissioners Court jointly with the University of Texas Medical School and the Dallas County Hospital District. *See generally* Gov't Code § 552.003 (stating in pertinent part that institution that spends or that is supported in whole or in part by public funds constitutes "governmental body" for purposes of the Act.)

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108(a) 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). 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 test results relate to cases which are under continuing investigation by the Federal Bureau of Investigations (the “FBI”). You also state that a representative of the FBI has asked that the information not be released to the requestor. Finally, you have submitted a letter from USDOJ stating that the release of the requested information “may undermine the criminal investigation currently being conducted by our office and the FBI.” Therefore, based on your representations and our review of the information at issue, we find that the release of the test results “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a); *see* Open Records Decision Nos. 372 at 4 (1983) (stating that where incident involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of related information), 493 at 2 (1988), 272 (1981); *see also* Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor). Accordingly, we conclude that the institute may withhold the information from disclosure pursuant to section 552.108 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

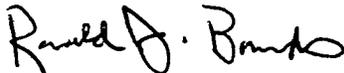
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 161677

Enc: Submitted documents

c: Mr. Bennet Cunningham
Investigative Reporter
CBS 11
10111 N. Central Expressway
Dallas, Texas 75231
(w/o enclosures)