



May 22, 2002

Ms. Lori L. Ordiway
Assistant District Attorney
Dallas County District Attorney's Office
133 North Industrial Boulevard, LB 19
Dallas, Texas 75207-4399

OR2002-2740

Dear Ms. Ordiway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163311.

The Dallas County District Attorney's Office (the "district attorney") received a request for copies of six categories of information pertaining to an investigation of drug arrests and/or convictions secured upon the conduct and/or testimony of City of Dallas police department officers and/or one of four confidential informants. You state that you have provided the requestor with some information that is responsive to request item three and with numerical information concerning the total number of cases returned by the district attorney's intake division. You also state that you do not maintain information that is responsive to request items one and two.¹ You claim, however, that the remaining requested information, which is responsive to request items three through six, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.111 of the Government Code, as well as pursuant to Rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.²

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).

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.

You indicate that the information in Exhibits 3 and 12 is not responsive to the request. Based on our review of your representations and the information in these exhibits, we agree and, thus, conclude that we need not address whether the information in Exhibits 3 and 12 is subject to disclosure under the Public Information Act (the "Act").

We now address the responsive information which you submitted to us for review as Exhibits 4, 8, 10, 11, and 13. You claim that Exhibits 4 and 8 are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a) provides in pertinent part that information that is held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if the release of the information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Section 552.108(b) provides in pertinent part that an 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 is excepted from disclosure if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(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 release of the information that is responsive to request items three and four would interfere with an active criminal investigation being conducted by the Federal Bureau of Investigation (the "FBI"). You indicate through your representations that the FBI does not wish for this information to be released. Based on our review of your arguments and Exhibits 4 and 8, we find that the release of Exhibit 8 would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a). Accordingly, we conclude that the district attorney may withhold Exhibit 8 from disclosure in its entirety pursuant to section 552.108(a)(1) of the Government Code. We also find that the release of portions of Exhibit 4 would interfere with law enforcement or prosecution. *See* Gov't Code § 552.108(b); *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 district attorney may withhold the marked portions of Exhibit 4 from disclosure pursuant to section 552.108(b)(1) of the Government Code.

You also claim that the remaining portions of Exhibit 4, as well as the entirety of Exhibits 10, 11, and 13, are excepted from disclosure pursuant to section 552.108. Section 552.108 also provides in pertinent part:

...

(b) [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 is excepted from the requirements of 552.021 if: . . .(3) the internal record or notation: . . . (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108 (b)(3)(B). We note that when a governmental body asserts that particular information reflects a prosecutor's mental impressions or legal reasoning, we strongly encourage the governmental body, in its request for a ruling, to explain how the information does so. You state that the remaining information in Exhibit 4, as well as the entirety of Exhibits 10, 11, and 13 was developed by assistant district attorneys and reflects those attorneys' mental impressions and legal reasoning concerning the narcotics cases that are the subject of this request. Based on our review of your arguments, the remaining information in Exhibit 4, and the entirety of Exhibits 10, 11, and 13, we conclude that this information was prepared by an attorney and reflects the mental processes and legal reasoning of an attorney representing the state. Accordingly, we conclude that the district attorney may withhold the remaining information in Exhibit 4, as well as the entirety of Exhibits 10 and 11 from disclosure as attorney work product pursuant to section 552.108(b)(3)(B). We also conclude that the district attorney may withhold the entirety of Exhibit 13 from disclosure pursuant to section 552.108(b)(3)(B) of the Government Code to the extent that the information in that exhibit may be responsive to any portion of the request. Because we base our ruling on section 552.108 of the Government Code, we need not consider your other claimed exceptions to disclosure.

In summary, the district attorney may withhold Exhibits 4, 8, 10, and 11 from disclosure in their entirety pursuant to section 552.108 of the Government Code. The district attorney may also withhold Exhibit 13 from disclosure in its entirety pursuant to section 552.108 to the extent that it may be responsive to any portion of the request.

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

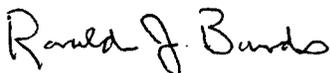
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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/seg

Ref: ID# 163311

Enc. Marked documents

cc: Ms. Holly Becka
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