ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2005

Mr. Les Moore
Police Legal Adviser
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2005-09265

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 234258.

The Irving Police Department (the "department") received a request for all information, including a video, pertaining to a specified arrest. You state that the department does not have a video responsive to the request.[1] You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes an Affidavit for Determination of Probable Cause. Information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, under section 552.022, this public court document must be released to the requestor, unless it is confidential under other law. Although you claim this information is excepted under sections 552.103 and 552.108, these sections are discretionary exceptions under the Act, and are therefore not "other law" that makes information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental

[1]You inform us that the requested videotape is in the custody of the Dallas County District Attorney's Office.

body may waive section 552.108). Therefore, this document must be released to the requestor pursuant to section 552.022.

We will consider your section 552.108 claim for the remaining submitted information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to a pending criminal case. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See 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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle.* Thus, with the exception of basic front page offense and arrest information, you may withhold the remaining requested information from the requestor based on section 552.108(a)(1).[2] We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We note that the remaining information includes the social security numbers of the two arrestees. Section 552.147 of the Government Code[3] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[4] Therefore, the department must withhold the social security number that we have marked under section 552.147. We note that the requestor, as one of the arrestee's attorney, has a special right of access to her client's social security number. Gov't Code § 552.023.

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[2]Because we are able to resolve this under section 552.108, we do not address your argument for exception under section 552.103 except to note that basic information is not excepted from release under section 552.103. *See* Open Records Decision No. 597 (1991).

[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[4]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the department must release the Affidavit for Determination of Probable Cause under section 552.022(a)(17) of the Government Code. With the exception of basic information, the department may withhold the remaining submitted information under section 552.108(a)(1); however, the department must withhold the social security number we have marked under section 552.147.[5]

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 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

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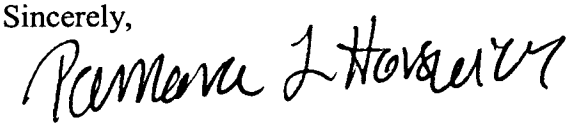
[5]We note that because the requestor has a special right of access to certain portions of the submitted information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 234258

Enc. Submitted documents

c: Ms. Robin Berry
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Dallas, Texas 75206
(w/o enclosures)