



March 8, 2000

Mr. Rex McEntire
City Attorney
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2000-0940

Dear Mr. McEntire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172736

The City of North Richland Hills (the "city") received a request for an inventory or other documents that indicate the materials or information discovered in the execution of a search warrant at a time and place specified by the requestor. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have also alleged facts which raise section 552.108 of the Government Code. You have submitted responsive information to this office for review. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes a probable cause affidavit for a search warrant. The affidavit is made public by law outside the Public Information Act. Information specifically made public by law outside the act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Amended article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed*, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code 18.01(b))(emphasis added). Once executed, a search warrant affidavit may not be withheld from public disclosure. *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 498-9 (Tex. App.-- Beaumont 1997, orig. proceeding); *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813 (Tex. App.-- Beaumont 1997, orig. proceeding). Therefore the submitted affidavit must be released.

You relate that the responsive information involves three active criminal cases and that to produce this information would compromise these criminal cases and the ongoing investigation. This representation raises section 552.108, the "law enforcement exception," which provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Based upon your representation, we conclude that the release of the requested 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); Open Records Decision No. 216 (1978). Therefore, responsive information may be withheld under section 552.108(a)(1) of the Government Code. However, "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. See generally *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). Note also that section 552.103 does not except this basic information from disclosure. Open Records Decision No. 362 (1983). The city must release "basic information" and the search warrant affidavit, and may withhold the remaining responsive information.

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.

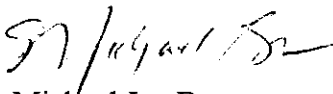
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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).

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 132736

Encl Submitted documents

cc: Mr. Mike Lee
Fort Worth Star-Telegram
Via Fax: 655-3883
(w/o enclosures)