



November 21, 2000

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

OR2000-4495

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# 141505.

The City of North Richland Hills (the "city") received a request for 14 items. Although you have not submitted a copy of the request for information, in a letter to the requestor you state that you will release information responsive to request items 1, 3, 5, 8, 9, 12, and 13. Further, you will release responsive information relating to request item 10 with the exception of one memorandum. You also state that no information exists for request items 2, 4, 7, and 11.¹ With regard to request item 14, you explain that the city has no responsive information but its attorney has the information. You claim that the submitted information, which is responsive to request items 6 and 10, is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. Although you have not submitted information responsive to request item 14, you claim that it is excepted by sections 552.103 and 552.107. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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

¹ The Public Information Act (the "Act") only applies to information 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 open records requests. Open Records Decisions Nos. 452 (1986), 342 (1982). Furthermore, the Act does not ordinarily require a governmental body to obtain new information to comply with a request. Open Records Decision No. 561 (1990). However, a governmental body must make a good faith effort to relate a request for information to information which it holds. *Id.*

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. Gov't Code § 552.301(e)(1)(A)-(D). However, you have failed to submit a copy of the request for information as required by section 552.301(e). Further, you have failed to submit any information responsive to request item 14.²

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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). You argue that the submitted information is excepted under sections 552.103, 552.107, and 552.108. These sections are discretionary exceptions and do not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under the Act can be waived).

However, you inform us that this office has previously ruled on information pertaining to requests similar to the current request for information. You state that information requested in item 6 is for all information which relates in any manner to a probable cause affidavit resulting in a search warrant issued for 8240 Ulster Drive during December of 1999. In response to this request item, you have submitted the criminal investigation file which you explain that you submitted in previous rulings. In Open Records Letter Nos. 2000-0940 and 2000-0941, this office allowed the city to withhold information related to three active criminal cases under section 552.108(a)(1). Further, you explain that the prosecution related to the criminal cases is ongoing. Therefore, you may withhold the submitted information that we previously determined you could withhold in Open Records Letter Nos. 2000-0940 and 2000-0941.

However, this office also issued Open Records Letter No. 2000-1981, in which we instructed the city to release internal affairs investigations relating to the search warrant at 8240 Ulster Driver. Further, you have filed a lawsuit against this office with regard to the release of the documents in Open Records Letter No. 2000-1981. Because it appears that a portion of the

²Although you claim that you do not have responsive information to request item 14, you state that the city's attorney has responsive information. Under section 552.002(a)(2), information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business for a governmental body and the governmental body own the information or has a right access to it is public information. *See also* Open Records Decision No. 499 (1988) (providing that records held by a city's private attorney that relate to city legal services are subject to the Public Information Act).

documents at issue in this file are subject to the lawsuit, we will not address this information and will allow the trial court to resolve the issue of whether these records must be released to the requestor.

With regard to information, such as the memorandum dated 12/15/99 and any other submitted information that was not specifically ruled on in Open Records Letter Nos. 2000-940, 2000-0941 or 2000-1981, you must release this information because sections 552.103, 552.107 and 552.108 do not provide a compelling reason to overcome the presumption of openness in section 552.302 of the Government Code.

We also note that the submitted information contains medical records and criminal history record information ("CHRI"). We are unable to determine whether this information has been ruled on in any of the prior rulings but it is possible that this information was excepted under section 552.108 in Open Records Letter Nos. 2000-0940 and 2000-0941. However, if this information was not addressed in Open Records Letter Nos. 2000-0940 and 2000-0941, we note that medical records are excepted from disclosure under section 159.002 of the Occupations Code. Occupation Code § 159.002(a) (providing that a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential may not be disclosed except as provided by this chapter). Further, CHRI generated by the National Crime Information Center or by the Texas Crime Information Center ("TCIC") is confidential. *See* Gov't Code § 411.083 (providing that the CHRI that the Department of Public Safety maintains is confidential).

In conclusion, you may withhold the submitted information which we previously determined could be withheld under section 552.108(a)(1) in Open Record Letters Nos. 2000-0940 and 2000-941. However, we will not address the submitted information which we told the city to release in Open Records Letter No. 2000-1981 due to the pending lawsuit. To the extent that information we allowed you to withhold under Open Record Letters Nos. 2000-0940 and 2000-941 was ordered released in Open Records Letter No. 2000-1981, we will not address this information and we will allow the trial court to address this information. You must release the information which has not been addressed in previous rulings or is not otherwise confidential.

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).

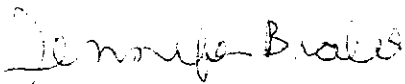
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 the General Services 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. 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 141505

Encl: Submitted documents and audiotapes

cc: Mr. Tom Carse, P.C.
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(w/o enclosures)