



August 1, 2000

Ms. Cathy S. Compton
Assistant District Attorney
Hays County
Hays County Justice Center
110 East. Martin Luther King
San Marcos, Texas 78666

OR2000-2904

Dear Ms. Compton

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137677.

The Hays County District Attorney's Office (the "county") received a four-item request for information related to an inventory of assets forfeited to the county's Narcotics Task Force as well as information regarding a specific informant. You explain that a portion of the information does not exist and that you have sought clarification from the requestor on another portion of the request. You argue that some of the information relating to the informant is excepted from disclosure under section 552.108 of the Government Code. You have submitted the information you wish to withhold. We have considered the exception you claim and reviewed the submitted information.

In the first item of his request, the requestor asks for a "total inventory of assets forfeited to the June 1998 formed Hays County Narcotics Task Force including cash, weapons, vehicles, real property and real estate and any other personal belongings forfeited to the Hays County Narcotics Task Force to fund task force investigations and split with the District Attorney's office." You state that you have informed the requestor that you cannot comply with this request without more specificity. You explain that you have sent a letter to the requestor seeking clarification of the request. *See* Gov't Code § 552.222(b) (permitting governmental body to ask for clarification if request is unclear).

It is well-established that a governmental body may not disregard a request for records made pursuant to the Public Information Act merely because a requestor does not specify the exact documents desired. A governmental body must make a good faith effort to relate a request to information held by it. *See* Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). Section 552.222(b) of the Government Code, however, provides that if a governmental body

is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office has previously held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982) (governmental body sought clarification as to particular documents sought when requestor asked for all documents relating to particular issue).

We consider the request to be sufficiently specific. The request specifies the physical or other form of the information, the subject matter of the information, and the time frame for the creation or receipt of the requested information. The request is sufficiently clear and understandable to inform the county of the records being requested. We conclude that this item of the request is valid. Consequently, the county must release all documents for which you have raised no exception to disclosure.

You explain that the information sought in item numbers two and four of the request do not exist. You state that you have informed the requestor of such. A governmental body is not expected to produce information which does not exist, nor does the Act require a governmental body to prepare new information. *See* Open Records Decision No. 605 (1992).

In the third item of the request, the requestor asks for a copy of the paperwork setting forth the terms and conditions of a specified informant's service with the task force. You argue that the responsive information is excepted from public disclosure under Government Code section 552.108. You state that it is the county's "position that the release of [the information] would hinder both the prosecution of cases currently on the court docket, as well as the investigation and detection of future cases by the Task Force." You explain that "this informant is involved in many cases which are still being prosecuted, and the disclosure of the agreement would greatly hamper the State's ability to prosecute the cases."

Section 552.108(b)(1) provides 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 [required public disclosure] if the release of the internal record or notation would interfere with law enforcement or prosecution . . ." After considering your arguments and reviewing the submitted information, we conclude the information may be withheld under subsection 552.108(b)(1).

In summary, information responsive to item number one, for which you have claimed no exception, must be released to the requestor. The information responsive to item number three may be withheld.

This letter ruling is limited to the particular records at issue in this request and 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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137677

Encl. Submitted documents

cc: Mr. Murlin Evans
San Marcos Daily Record
P.O. Box 1109
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(w/o enclosures)